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# ***NORTH CAROLINA REGISTER***

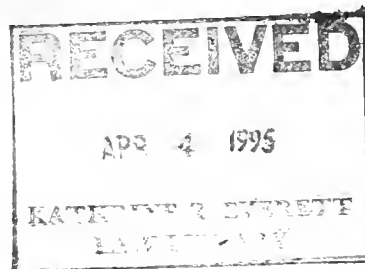
**VOLUME 10 • ISSUE 1 • Pages 1 - 54  
April 3, 1995**

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Contested Case Decisions

## **PUBLISHED BY**

***The Office of Administrative Hearings  
Rules Division  
PO Drawer 27447  
Raleigh, NC 27611-7447  
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Fax (919) 733-3462***



## INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

### **NORTH CAROLINA REGISTER**

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the *Register*. The *Register* will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and twenty dollars (\$120.00) for 24 issues. Individual issues may be purchased for ten dollars (\$10.00).

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, PO Drawer 27447, Raleigh, NC 27611-7447.

### **ADOPTION, AMENDMENT, AND REPEAL OF RULES**

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating

agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

### **TEMPORARY RULES**

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

### **NORTH CAROLINA ADMINISTRATIVE CODE**

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 40 occupational licensing boards. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards. The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page. Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.
- (2) The full publication and supplement service is printed and distributed by Barclays Law Publishers. It is available in hardcopy, CD-ROM and diskette format. For subscription information, call 1-800-888-3600.

### **CITATION TO THE NORTH CAROLINA REGISTER**

The *North Carolina Register* is cited by volume, issue, page number and date. 10:01 NCR 1-67, April 3, 1995 refers to Volume 10, Issue 1, pages 1 through 67 of the *North Carolina Register* issued on April 3, 1995.

# NORTH CAROLINA REGISTER



**Volume 10, Issue 1  
Pages 1 - 53**

**April 3, 1995**

This issue contains documents officially  
filed through March 20, 1995.

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# NORTH CAROLINA REGISTER

## Publication Schedule

(November 1994 - September 1995)

| Volume and Issue Number | Issue Date | Last Day for Filing | Last Day for Electronic Filing | Earliest Date for Public Hearing<br><i>15 days from notice</i> | * End of Required Comment Period<br><i>30 days from notice</i> | Last Day to Submit to RRC | ** Earliest Effective Date |
|-------------------------|------------|---------------------|--------------------------------|--|--|---------------------------|----------------------------|
| 9:15                    | 11/01/94   | 10/11/94            | 10/18/94                       | 11/16/94   | 12/01/94   | 12/20/94                  | 02/01/95                   |
| 9:16                    | 11/15/94   | 10/24/94            | 10/31/94                       | 11/30/94   | 12/15/94   | 12/20/94                  | 02/01/95                   |
| 9:17                    | 12/01/94   | 11/07/94            | 11/15/94                       | 12/16/94   | 01/03/95   | 01/20/95                  | 03/01/95                   |
| 9:18                    | 12/15/94   | 11/22/94            | 12/01/94                       | 12/30/94   | 01/17/95   | 01/20/95                  | 03/01/95                   |
| 9:19                    | 01/03/95   | 12/08/94            | 12/15/94                       | 01/18/95   | 02/02/95   | 02/20/95                  | 04/01/95                   |
| 9:20                    | 01/17/95   | 12/21/94            | 12/30/94                       | 02/01/95   | 02/16/95   | 02/20/95                  | 04/01/95                   |
| 9:21                    | 02/01/95   | 01/10/95            | 01/18/95                       | 02/16/95   | 03/03/95   | 03/20/95                  | 05/01/95                   |
| 9:22                    | 02/15/95   | 01/25/95            | 02/01/95                       | 03/02/95   | 03/17/95   | 03/20/95                  | 05/01/95                   |
| 9:23                    | 03/01/95   | 02/08/95            | 02/15/95                       | 03/16/95   | 03/31/95   | 04/20/95                  | 06/01/95                   |
| 9:24                    | 03/15/95   | 02/22/95            | 03/01/95                       | 03/30/95   | 04/17/95   | 04/20/95                  | 06/01/95                   |
| 10:1                    | 04/03/95   | 03/13/95            | 03/20/95                       | 04/18/95   | 05/03/95   | 05/22/95                  | 07/01/95                   |
| 10:2                    | 04/17/95   | 03/24/95            | 03/31/95                       | 05/02/95   | 05/17/95   | 05/22/95                  | 07/01/95                   |
| 10:3                    | 05/01/95   | 04/07/95            | 04/17/95                       | 05/16/95   | 05/31/95   | 06/20/95                  | 08/01/95                   |
| 10:4                    | 05/15/95   | 04/24/95            | 05/01/95                       | 05/30/95   | 06/14/95   | 06/20/95                  | 08/01/95                   |
| 10:5                    | 06/01/95   | 05/10/95            | 05/17/95                       | 06/16/95   | 07/03/95   | 07/20/95                  | 09/01/95                   |
| 10:6                    | 06/15/95   | 05/24/95            | 06/01/95                       | 06/30/95   | 07/17/95   | 07/20/95                  | 09/01/95                   |
| 10:7                    | 07/03/95   | 06/12/95            | 06/19/95                       | 07/18/95   | 08/02/95   | 08/21/95                  | 10/01/95                   |
| 10:8                    | 07/14/95   | 06/22/95            | 06/29/95                       | 07/31/95   | 08/14/95   | 08/21/95                  | 10/01/95                   |
| 10:9                    | 08/01/95   | 07/11/95            | 07/18/95                       | 08/16/95   | 08/31/95   | 09/20/95                  | 11/01/95                   |
| 10:10                   | 08/15/95   | 07/25/95            | 08/01/95                       | 08/30/95   | 09/14/95   | 09/20/95                  | 11/01/95                   |
| 10:11                   | 09/01/95   | 08/11/95            | 08/18/95                       | 09/18/95   | 10/02/95   | 10/20/95                  | 12/01/95                   |
| 10:12                   | 09/15/95   | 08/24/95            | 08/31/95                       | 10/02/95   | 10/16/95   | 10/20/95                  | 12/01/95                   |

*This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.*

\* An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.

\*\* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st day of the next calendar month.

**EXECUTIVE ORDER NO. 72  
NORTH CAROLINA STATE  
POSTSECONDARY ELIGIBILITY  
REVIEW COMMISSION**

WHEREAS, The Higher Education Act of 1965, Title IV, United States Code, created Federal Financial Assistance programs and access to them for students enrolled in accredited higher and postsecondary education institutions and that Act is reauthorized every five years; and

WHEREAS, The Higher Education Act Amendments of 1992 included a new provision, Part H - Program Integrity Triad, Subpart 1 - State Postsecondary Review Program, which requests and authorizes each state to designate a State Postsecondary Review Entity; and

WHEREAS, with due diligence and concern for the education providers in the State of North Carolina, the Governor has been advised that designating a representative Commission to act as the N.C. State Postsecondary Review Entity will best serve the intent of the legislation and the needs of the education community.

NOW, THEREFORE, by the authority vested in me as Governor by the laws and Constitution of the State of North Carolina, **IT IS ORDERED:**

**Section 1. Establishment.**

The North Carolina State Postsecondary Eligibility Review Commission is hereby established to carry out the State's responsibility under Title IV USC, Part H. All acts done by the Commission prior to the execution of this Order are hereby ratified.

**Section 2. Duties.**

The Commission shall guide the activities of the State's Postsecondary Review Program, serve as the State's Postsecondary Review Entity, prepare the Eligibility Review Standards, and implement the Postsecondary Institutional Eligibility Review process on behalf of the United States Secretary of Education.

**Section 3. Membership.**

The Commission shall be composed of five members appointed by the Governor from the following categories:

- A. One representative of public higher education;
- B. One representative of private higher education;
- C. One representative of community colleges;
- D. One representative proprietary schools; and
- E. One at-large representative.

The Executive Directors of the N.C. State Education Assistance Authority and the N. C. State Approving Agency shall serve as ex-officio members. The members shall serve two-year terms. The Chairperson shall be chosen by the membership to serve a term as agreed to by the membership and the selected chair. In the event a position becomes vacant, the Governor shall appoint another member to fill the unexpired term.

**Section 4. Expenses.**

Commission members shall receive necessary per diem, travel and subsistence expenses, pursuant to N.C.G.S. 138-5, if available. Funds to support these expenses, to the extent permitted by federal law, shall be paid from federal sources.

**Section 5. Administrative Support.**

A. The Commission is authorized, to the extent federal funds are available, to hire such personnel as to necessary to fulfill its mission. Personnel shall be directly accountable to the Commission.

B. The North Carolina Department of Administration shall provide administrative fiscal management services to the Commission.

**Section 6. Review.**

The Commission membership shall review its need to continue to exist April 1, 1996 and every two years thereafter. Following each review, the Commission shall recommend that the Governor either extend or rescind this Executive Order.

Done in the Capital City of Raleigh, North Carolina, this the 6th day of March, 1995.

*This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.*

U.S. Department of Justice

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

DLP:GS:RA:tlb  
DJ 166-012-3  
94-4615

February 17, 1995

Richard J. Rose, Esq.  
Poyner & Spruill  
P. O. Box 353  
Rocky Mount, North Carolina 27802

Dear Mr. Rose:

This refers to Ordinance No. 0-94-25 which annexes 20 areas (Nos. 200-219), and the designation of these areas to districts for the City of Rocky Mount in Edgecombe and Nash Counties, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on December 19, 1994.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Deval L. Patrick  
Assistant Attorney General  
Civil Rights Division

By:

Elizabeth Johnson  
Acting Chief, Voting Section



STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE  
TAX REVIEW BOARD

IN THE MATTER OF:

The Proposed Assessment of controlled excise tax for  
possession of non-tax paid controlled substance on 30  
April 1993 against Jesse Lee Higdon

)  
)  
)  
)  
)  
)  
)

ADMINISTRATIVE  
DECISION NUMBER: 290

**THIS MATTER** was heard before the Tax Review Board (hereinafter "Board") on 24 January 1995 in the City of Raleigh, Wake County, North Carolina. It involves an appeal by Jesse Lee Higdon (hereinafter "Taxpayer") from the Final Decision of Michael A. Hannah, Assistant Secretary for Legal and Administrative Services for the Department of Revenue (hereinafter "Assistant Secretary") entered on 16 September 1993, sustaining a proposed controlled excise tax assessment of 30 April 1992.

Chairman Harlan E. Boyles presided over the hearing with ex officio member, Hugh Wells, Chairman, Utilities Commission and duly appointed member, Jeff D. Batts, Attorney at Law.

Thomas K. Maher, Attorney at Law, appeared on behalf of the Taxpayer; Christopher E. Allen, Associate Attorney General, appeared on behalf of the Department of Revenue.

**AND IT APPEARING TO THE BOARD:** that the findings of fact made by the Assistant Secretary were fully supported by competent evidence in the record, that the conclusions of law made by the Assistant Secretary were fully supported by the findings of fact, and that the decision by the Assistant Secretary was fully supported by the conclusions of law;

**IT IS THEREFORE ORDERED** that the Final Decision of the Assistant Secretary is **CONFIRMED** in every respect.

Entered this the 17th day of February, 1995.

TAX REVIEW BOARD

\_\_\_\_\_  
Harlan E. Boyles, Chairman  
State Treasurer

\_\_\_\_\_  
Hugh Wells  
Chairman, Utilities Commission

\_\_\_\_\_  
Jeff D. Batts

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF: )  
The Proposed Assessment of additional Sales and Use Tax )  
for the period of 7 July 1986 through 30 September 1990 )  
against Boatland of Wylie, Inc. )  
 )

ADMINISTRATIVE  
DECISION NUMBER: 291

**THIS MATTER** was heard before the Tax Review Board (hereinafter "Board") on 24 January 1995 in the City of Raleigh, Wake County, North Carolina. It involves an appeal by Boatland of Wylie, Inc. (hereinafter "Taxpayer") from the Final Decision of Michael A. Hannah, Assistant Secretary for Legal and Administrative Services for the Department of Revenue (hereinafter "Assistant Secretary") entered on 10 November 1993, sustaining a proposed assessment of additional sales and use tax for the period of 7 July 1986 through 30 September 1990.

Chairman Harlan E. Boyles presided over the hearing with ex officio member, Hugh Wells, Chairman, Utilities Commission and duly appointed member, Jeff D. Batts, Attorney at Law.

Lisa G. Caddell, Attorney at Law, appeared on behalf of the Taxpayer; Marilyn R. Mudge, Associate Attorney General, appeared on behalf of the Department of Revenue.

**AND IT APPEARING TO THE BOARD:** that the findings of fact made by the Assistant Secretary were fully supported by competent evidence in the record, that the conclusions of law made by the Assistant Secretary were fully supported by the findings of fact, and that the decision by the Assistant Secretary was fully supported by the conclusions of law;

**IT IS THEREFORE ORDERED** that the Final Decision of the Assistant Secretary is **CONFIRMED** in every respect.

Entered this the 17th day of February, 1995.

TAX REVIEW BOARD

\_\_\_\_\_  
Harlan E. Boyles, Chairman  
State Treasurer

\_\_\_\_\_  
Hugh Wells  
Chairman, Utilities Commission

\_\_\_\_\_  
Jeff D. Batts

## STATE OF NORTH CAROLINA

## COUNTY OF WAKE

BEFORE THE  
TAX REVIEW BOARD

IN THE MATTER OF:

The Proposed Assessment of additional Sales and Use  
Tax for the period of 1 July 1989 through 30 June 1992  
against Genetic Design, Inc.

ADMINISTRATIVE  
DECISION NUMBER: 292

**THIS MATTER** was heard before the Tax Review Board (hereinafter "Board") on 24 January 1995 in the City of Raleigh, Wake County, North Carolina. It involves an appeal by Genetic Design, Inc. (hereinafter "Taxpayer") from the Final Decision of Michael A. Hannah, Assistant Secretary for Legal and Administrative Services for the Department of Revenue (hereinafter "Assistant Secretary") entered on 21 March 1994, sustaining a proposed assessment of additional sales and use tax for the period of 1 July 1989 through 30 June 1992.

Chairman Harlan E. Boyles presided over the hearing with ex officio member, Hugh Wells, Chairman, Utilities Commission and duly appointed member, Jeff D. Batts, Attorney at Law.

Gordon L. Richardson, Jr., CPA, appeared on behalf of the Taxpayer; Marilyn R. Mudge, Associate Attorney General, appeared on behalf of the Department of Revenue.

**AND IT APPEARING TO THE BOARD:** that the findings of fact made by the Assistant Secretary were fully supported by competent evidence in the record, that the conclusions of law made by the Assistant Secretary were fully supported by the findings of fact, and that the decision by the Assistant Secretary was fully supported by the conclusions of law;

**IT IS THEREFORE ORDERED** that the Final Decision of the Assistant Secretary is **CONFIRMED** in every respect.

Entered this the 17th day of February, 1995.

## TAX REVIEW BOARD

\_\_\_\_\_  
Harlan E. Boyles, Chairman  
State Treasurer

\_\_\_\_\_  
Hugh Wells  
Chairman, Utilities Commission

\_\_\_\_\_  
Jeff D. Batts

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF: )

The Proposed Assessment of additional Income Tax for the )  
taxable years of 1980 and 1981 against Edward J. David )ADMINISTRATIVE  
DECISION NUMBER: 293

**THIS MATTER** was heard before the Tax Review Board (hereinafter "Board") on 24 January 1995 in the City of Raleigh, Wake County, North Carolina. It involves an appeal by Edward J. David (hereinafter "Taxpayer") from the Final Decision of Michael A. Hannah, Assistant Secretary for Legal and Administrative Services for the Department of Revenue (hereinafter "Assistant Secretary") entered on 25 August 1993, sustaining a proposed assessment of additional income tax for the taxable years of 1980 and 1981.

Chairman Harlan E. Boyles presided over the hearing with ex officio member, Hugh Wells, Chairman, Utilities Commission and duly appointed member, Jeff D. Batts, Attorney at Law.

The Taxpayer did not appear at the hearing; Marilyn R. Mudge, Associate Attorney General, appeared on behalf of the Department of Revenue. Pursuant to N.C.G.S. §105-241.2(b), the Tax Review Board conducted the hearing upon review of the records transmitted by the Department of Revenue's Secretary.

**AND IT APPEARING TO THE BOARD:** that the findings of fact made by the Assistant Secretary were fully supported by competent evidence in the record, that the conclusions of law made by the Assistant Secretary were fully supported by the findings of fact, and that the decision by the Assistant Secretary was fully supported by the conclusions of law;

**IT IS THEREFORE ORDERED** that the Final Decision of the Assistant Secretary is **CONFIRMED** in every respect.

Entered this the 17th day of February, 1995.

## TAX REVIEW BOARD

---

Harlan E. Boyles, Chairman  
State Treasurer

---

Hugh Wells  
Chairman, Utilities Commission

---

Jeff D. Batts

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE  
TAX REVIEW BOARD

IN THE MATTER OF: )  
The Proposed Assessment of withholding income tax for )  
the taxable years of 1984 through 1987 assessed against )  
Jo Anne C. Duncan )  
)

ADMINISTRATIVE  
DECISION NUMBER: 294

**THIS MATTER** was heard before the Tax Review Board (hereinafter "Board") on 9 November 1994 in the City of Raleigh, Wake County, North Carolina. It involves an appeal by Jo Anne C. Duncan (hereinafter "Taxpayer") from the Final Decision of Myron C. Banks, former Deputy Secretary for the Department of Revenue (hereinafter "Deputy Secretary") entered on 24 September 1991, sustaining a proposed assessment of withholding income tax for the taxable years of 1984 through 1987.

Chairman Harlan E. Boyles presided over the hearing with Hugh Wells, Chairman, Utilities Commission and duly appointed member, Jeff D. Batts, Attorney at Law.

Margaret G. Johnston, Attorney at Law, appeared on behalf of the Taxpayer; Christopher E. Allen, Associate Attorney General, appeared on behalf of the Department of Revenue.

**AND IT APPEARING TO THE BOARD:** that the findings of fact made by the Deputy Secretary were not supported by the evidence in the record; that the conclusions of law made by the Deputy Secretary were not supported by the findings of fact, and that the decision of the Deputy Secretary was not supported by the conclusions of law;

**IT IS THEREFORE ORDERED,** that the Final Decision of the Deputy Secretary is **REVERSED**.

Entered this the 17th day of February, 1995.

TAX REVIEW BOARD

\_\_\_\_\_  
Harlan E. Boyles, Chairman  
State Treasurer

\_\_\_\_\_  
Hugh Wells  
Chairman, Utilities Commission

\_\_\_\_\_  
Jeff D. Batts

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE  
TAX REVIEW BOARD

IN THE MATTER OF:

The Proposed Assessment of withholding income tax for  
the quarterly periods ending 31 March 1984 through 31  
December 1986 assessed against **Richard E. Stirling**

ADMINISTRATIVE  
DECISION NUMBER: 295

**THIS MATTER** was heard before the Tax Review Board (hereinafter "Board") on 13 September 1994 in the City of Raleigh, Wake County, North Carolina. It involves an appeal by Richard E. Stirling, trading as Capitol Printing (hereinafter "Taxpayer") from the Final Decision of Myron C. Banks, former Deputy Secretary for the Department of Revenue (hereinafter "Deputy Secretary") entered on 21 July 1992, sustaining a proposed assessment of withholding income tax for the quarterly periods ending 31 March 1984 through 31 December 1986.

Chairman Harlan E. Boyles presided over the hearing with Hugh Wells, Chairman, Utilities Commission and duly appointed member, Jeff D. Batts, Attorney at Law.

Taxpayer appeared at the hearing on his own behalf; George Boylan, Special Deputy Attorney General, appeared on behalf of the Department of Revenue.

**AND IT APPEARING TO THE BOARD:** that the findings of fact made by the Deputy Secretary were fully supported by competent evidence in the record; that the conclusions of law made by the Deputy Secretary were fully supported by the findings of fact, and that the decision of the Deputy Secretary was supported by the conclusions of law;

**IT IS THEREFORE ORDERED,** that the Final Decision of the Deputy Secretary is **CONFIRMED** in every respect.

Entered this the 28th day of February, 1995.

## TAX REVIEW BOARD

\_\_\_\_\_  
Harlan E. Boyles, Chairman  
State Treasurer

\_\_\_\_\_  
Hugh Wells  
Chairman, Utilities Commission

\_\_\_\_\_  
Jeff D. Batts

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE  
TAX REVIEW BOARD

IN THE MATTER OF:

The Proposed Assessment of sales and use tax for the  
period of 1 February 1985 through 31 December 1986  
assessed against **Richard E. Stirling, T/A Capitol  
Printing**

ADMINISTRATIVE  
DECISION NUMBER: 296

**THIS MATTER** was heard before the Tax Review Board on 13 September 1994 in the City of Raleigh, Wake County, North Carolina. It involves an appeal by Richard E. Stirling, T/A Capitol Printing (hereinafter "Taxpayer") from the Final Decision of Myron C Banks, former Deputy Secretary (hereinafter "Deputy Secretary") entered on 21 July 1992 sustaining a proposed assessment of sales and use tax for the period of 1 February 1985 through 31 December 1986.

Chairman Harlan E. Boyles presided over the hearing with Hugh Wells, Chairman, Utilities Commission and duly appointed member, Jeff D. Batts, Attorney at Law participating.

Richard E. Stirling appeared pro se; George Boylan, Special Deputy Attorney General, appeared on behalf of the Department of Revenue.

**AND IT APPEARING TO THE BOARD:** that the findings of fact made by the Deputy Secretary were not supported by the evidence in the record; that the conclusions of law made by the Deputy Secretary were not supported by the findings of fact, and that the decision of the Deputy Secretary was not supported by the conclusions of law;

**IT IS THEREFORE ORDERED**, that the Final Decision of the Deputy Secretary is **REVERSED**.

Entered this the 28th day of February, 1995.

TAX REVIEW BOARD

\_\_\_\_\_  
Harlan E. Boyles, Chairman

\_\_\_\_\_  
Hugh Wells, Ex Officio Member  
Chairman Utilities Commission

\_\_\_\_\_  
Jeff D. Batts, Appointed Member

## STATE OF NORTH CAROLINA

## COUNTY OF WAKE

BEFORE THE  
TAX REVIEW BOARD

IN THE MATTER OF:

The Denial of Refund for the taxable year of 1987 by the  
Secretary of Revenue against Michael W. HubbleADMINISTRATIVE  
DECISION NUMBER: 297

**THIS MATTER** was heard before the Tax Review Board on 9 November 1994 in the City of Raleigh, Wake County, North Carolina. It involves an appeal by Michael W. Hubble (hereinafter "Taxpayer") from the Final Decision of Myron C. Banks, former Deputy Secretary (hereinafter "Deputy Secretary") entered on 14 August 1990, denying the Taxpayer's request for a refund of tax paid for the taxable year of 1987.

Chairman Harlan E. Boyles presided over the hearing with Hugh Wells, Chairman Utilities Commission and duly appointed member, Jeff D. Batts, Attorney at Law participating.

Robert N. Page, IV, Attorney at Law, appeared on behalf of the Taxpayer; Christopher E. Allen, Assistant Attorney General, appeared on behalf of the Department of Revenue.

At the hearing, Taxpayer's attorney argued and presented documentation which showed that within the time of filing of his Petition and this matter being reviewed by the Board, the Internal Revenue Service reversed its decision and allowed Taxpayer's educational expenses as a deduction. Taxpayer's federal tax records were adjustment to reflect the deduction.

**AND IT APPEARING TO THE BOARD:** that the appeal concerns a matter of federal internal revenue practice and involves the subsequent change in federal policy; and that federal practice should be followed to the extent that such practice is not contrary to state policy.

**AND IT FURTHER APPEARING TO THE BOARD:** that documentation presented at the hearing was not available when the Deputy Secretary of Revenue's decision was rendered; that the Deputy Secretary should be allowed the opportunity to consider this additional evidence in order to fully develop the record.

**IT IS THEREFORE ORDERED,** that Taxpayer's case is **Remanded** to the now Assistant Secretary of Revenue, and the Taxpayer shall have the opportunity to present additional evidence to be taken and ruled upon by the Assistant Secretary.

Entered this the 1st day of March, 1995.

## TAX REVIEW BOARD

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Harlan E. Boyles, Chairman

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Hugh Wells, Ex Officio Member  
Chairman Utilities Commission

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Jeff D. Batts, Appointed Member



STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE  
TAX REVIEW BOARD

IN THE MATTER OF:

The Proposed Assessment of sales and use tax for the  
period of 1 September 1985 through 31 July 1988  
assessed against Auto Equipment, Inc.

ADMINISTRATIVE  
DECISION NUMBER: 298

**THIS MATTER** was heard before the Tax Review Board on 9 November 1994 in the City of Raleigh, Wake County, North Carolina. It involves an appeal by Auto Equipment, Incorporated (hereinafter "Taxpayer") from the Final Decision of Myron C. Banks, former Deputy Secretary (hereinafter "Deputy Secretary") entered on 27 August 1992 sustaining a proposed assessment of sales and use tax for the period of 1 September 1985 through 31 July 1988.

Chairman Harlan E. Boyles presided over the hearing with Hugh Wells, Chairman Utilities Commission and duly appointed member, Jeff D. Batts, Attorney at Law participating.

Russell W. Chapman, Jr., Attorney at Law, appeared on behalf of the Taxpayer; George W. Boylan, Special Deputy Attorney General, appeared on behalf of the Department of Revenue.

**AND IT APPEARING TO THE BOARD:** that the findings of fact made by the Deputy Secretary were supported by the evidence in the record as to the sales in which Taxpayer did not acquire certificates of resale (i.e. Form E-590); that the conclusions of law made by the Deputy Secretary were supported by the findings of fact as to sales in which Taxpayer did not acquire Certificates of Resale (i.e. Form E-590), and in regard to those sales, the decision of the Deputy Secretary was supported by the conclusions of law;

**AND IT FURTHER APPEARING TO THE BOARD:** that the findings of fact made by the Deputy Secretary were not supported by the evidence in the record as to the sales in which Taxpayer did acquire certificates of resale (i.e. Form E-590); that the conclusions of law made by the Deputy Secretary were not supported by the findings of fact as to the sales in which Taxpayer acquired certificates of resale (i.e. Form E-590), and in regard to those sales, the decision of the Deputy Secretary was not supported by the conclusions of law;

**IT IS THEREFORE ORDERED,** that the Final Decision of the Deputy Secretary is **CONFIRMED** in part and **REVERSED** in part.

Entered this the 1st day of March, 1995.

TAX REVIEW BOARD

Harlan E. Boyles, Chairman

Hugh Wells, Ex Officio Member  
Chairman Utilities Commission

Jeff D. Batts, Appointed Member

**TITLE 5 - DEPARTMENT  
OF CORRECTION**

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Correction intends to adopt rule cited as 5 NCAC 5 .0001.

**Proposed Effective Date:** July 1, 1995.

A **Public Hearing** will be conducted at 10:00 a.m. on April 18, 1995 at the Archdale Building, 512 North Salisbury Street, Raleigh, NC 27603.

**Reason for Proposed Action:** To allow the Department of Correction to carry out the purposes of the State-Local Criminal Justice Partnership Act (amends G.S. Ch. 143B).

**Comment Procedures:** Please submit comments to: Nancy C. Lowe, Director, Criminal Justice Partnership Program, PO Box 29540, Raleigh, NC 27626-0540. The deadline for submission is May 3, 1995. You may submit written or oral comments at the hearing April 18, 1995, but time may be limited.

**Fiscal Note:** This Rule does not affect the expenditures or revenues of local government or state funds.

**CHAPTER 5 - CRIMINAL JUSTICE  
PARTNERSHIP PROGRAM**

**.0001 GRANT AWARD CONTRACTS**

After approving a Criminal Justice Partnership grant, the Department of Correction will provide a grant award contract to the grantee. Grant award contracts, bearing the original signatures of the grantee's authorizing official and fiscal officer, must be returned by the grantee to the Criminal Justice Partnership Program within 30 days of mailing. No alterations of any kind may be made on this contract.

Statutory Authority G.S. 143B-272.8.

**TITLE 7 - DEPARTMENT OF  
CULTURAL RESOURCES**

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the Department of Cultural Resources intends to amend rule cited as 7 NCAC 2F .0002.

**Proposed Effective Date:** July 1, 1995.

**Instructions on How to Demand a Public Hearing** (must be requested in writing within 15 days of notice): A public hearing may be requested by sending a written request to Caroline Shepard, State Library of North Carolina, 109

East Jones Street, Raleigh, NC 27601-2807, fax (919) 733-8748.

**Reason for Proposed Action:** To update language and clarify intent.

**Comment Procedures:** Comments may be submitted in writing to Caroline Shepard, State Library of North Carolina, 109 East Jones Street, Raleigh, NC 27601-2807, fax (919) 733-8748.

**Fiscal Note:** This Rule does not affect the expenditures or revenues of local government funds.

**CHAPTER 2 - DIVISION OF STATE LIBRARY**

**SUBCHAPTER 2F - NORTH CAROLINA PUBLIC  
LIBRARIAN CERTIFICATION COMMISSION**

**.0002 FULL CERTIFICATION**

(a) The North Carolina Public Librarian Certification Commission issues public librarian certificates to applicants who have received graduate degrees in library and information science from American Library Association-accredited schools or from regionally accredited schools of higher education, provided at least 18 semester hours have been completed and the hours include cataloging, reference, book selection, bibliography, multi-media materials, and public library administration programs or from regionally accredited programs of higher education in North Carolina.

(b) Courses specifically designed for school, media center, academic, or special librarianship will not fulfill the requirement for the 18 semester hours in public librarianship. Coursework must include the following core courses: cataloging, reference collection management, technology, and management.

(c) Courses specifically designed for school, media center, academic, or special librarianship, must also reflect general principles of librarianship in order to fulfill the requirements for public librarian certification.

Statutory Authority G.S. 143B-67.

**TITLE 13 - DEPARTMENT OF  
LABOR**

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Labor intends to adopt rules regarding compliance with, enforcement and interpretation of the Controlled Substance Examination Regulation Act. The agency will subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of the public hearing and of any comments received on the subject matter.

Statutory Authority G.S. 95-230 et seq.

**Proposed Effective Date:** January 1, 1996.

**A Public Hearing** will be conducted at 2:00 p.m. on Monday, April 24, 1995 at the Cates Auditorium, Meredith College Campus, 3800 Hillsborough St., Raleigh, NC.

**Reason for Proposed Action:** To clarify the Controlled Substance Examination Regulation Act.

**Comment Procedures:** Please submit your comments to Mr. Scott Templeton, APA Coordinator, N.C. Department of Labor, 4 W. Edenton Street, Raleigh, NC 27601, FAX (919) 715-5629; Telephone (919) 733-0368 by April 24, 1995. You may present written or oral comments at the hearing; however, time limits may be imposed by the Chair.

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**N**otice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Labor intends to adopt rules governing qualifications and/or competency of persons responsible for the operation of boilers. The agency will subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of the public hearing and of any comments received on the subject matter.

Statutory Authority G.S. 95-69.11(1).

**Proposed Effective Date:** January 1, 1996.

**A Public Hearing** will be conducted at 2:00 p.m. on June 16, 1995 at the NC Dept. of Agriculture Building, 2 W. Edenton Street, Room 359, Raleigh, NC.

**Reason for Proposed Action:** The North Carolina Department of Labor desires to obtain public comment on the subject of what, if any, standards should be set for knowledge and skill of persons responsible for the operation of boilers.

**Comment Procedures:** Please submit your comments to Mr. Scott Templeton, APA Coordinator, N.C. Department of Labor, 4 W. Edenton Street, Raleigh, NC 27601, FAX (919) 715-5629; Telephone (919) 733-0368 by June 16, 1995. You may present written or oral comments at the hearing; however, time limits may be imposed by the Chair.

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**TITLE 15A - DEPARTMENT OF  
ENVIRONMENT, HEALTH, AND  
NATURAL RESOURCES**

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**CHAPTER 2 - ENVIRONMENTAL  
MANAGEMENT COMMISSION**

**PUBLIC HEARINGS REGARDING THE REVISIONS  
TO THE WATER SUPPLY WATERSHED  
PROTECTION RULES (15A NCAC 2B .0101,  
.0104, .0202, .0211, .0301)**

Correction to the locations of two public hearings regarding the revisions to the water supply watershed protection rules.

Thursday, April 6, 1995  
Broyhill Civic Center  
1913 Hickory Boulevard, SE  
(U.S. 321 South)  
Lenoir, NC

Wednesday, April 19, 1995  
Mooresville Citizen Center  
215 North Main Street  
Mooresville, NC

The proposed rule revisions and dates and locations of the remaining public hearings were published in the *North Carolina Register*, Volume 9, Issue 23, Pages 1979-2015 (9:23 NCR 1979-2015). The Division will accept written comments received through May 12, 1995. For information on the proposed rule revisions contact Lisa Martin, North Carolina Division of Environmental Management, Water Quality Section, P.O. Box 29535, Raleigh, NC 27626-0535, (919-733-5083, ext. 565).

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**N**otice is hereby given in accordance with G.S. 150B-21.2 that the DEHNR - Environmental Management Commission intends to amend rules cited as 15A NCAC 2D .0520, .0531; .0902, .0909, .0952; 1402, .1406, .1409; and adopt 2D .1701 - .1702 and .1801 - .1803.

**Proposed Effective Date:** July 1, 1995.

**A Public Hearing** will be conducted at 7:00 p.m. on April 19, 1995 at the Charlotte/Mecklenburg Government Center, 1st. Floor Meeting Chamber, 600 East 4th Street, Charlotte, NC.

**Reason for Proposed Action:** To adopt new rules and rule amendments for the control of Volatile organic compounds in order to show continued compliance with the ozone standard in the Charlotte/Gastonia Area.

**Comment Procedures:** All persons interested in these matters are invited to attend the public hearing. Any person desiring to comment for more than three minutes is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The

hearing record will remain open until May 3, 1995, to receive additional written statements. Comments are requested on the impacts, including costs and benefits to the public and private sectors of the five additional control strategies presented. Comments should also address the need for any or all of these measures. In addition, comments are requested on the possible substitution of an enhanced inspection and maintenance (I/M) program for the proposed reformulated gasoline program. Specifically, comments and information should be provided on the desirability, viability and costs of such a substituted enhanced I/M program. Comments should be sent to and additional information concerning the hearing or the proposals may be obtained by contacting:

Mr. Thom Allen  
Division of Environmental Management  
P.O. Box 29535  
Raleigh, North Carolina 27626-0535  
(919) 733-1489 - Phone  
(919) 733-1812 - Fax

**Fiscal Note:** These Rules affect the expenditures or revenues of local government funds and the expenditure or distribution of State funds subject to the Executive Budget Act, Article 1 of Chapter 143..

## CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

### SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS

#### SECTION .0500 - EMISSION CONTROL STANDARDS

##### .0520 CONTROL AND PROHIBITION OF OPEN BURNING

(a) Purpose. This Regulation Rule is for the purpose of preventing, abating, and controlling air pollution resulting from air contaminants released in the open burning of refuse or other combustible materials.

(b) Scope. This Regulation Rule applies to all operations involving open burning except those specifically exempted by Paragraph (d) of this Regulation Rule.

(c) A person shall not cause, allow, or permit open burning of refuse or other combustible material except those covered by a permit issued under the authority of the Commission under Section 143-215.108 of the act or the regulations of a duly certified local air pollution control program having jurisdiction.

(d) Permissible Open Burning. While recognizing that open burning contributes to air pollution, the Commission is aware that certain types of open burning may reasonably be allowed in the public interest. Therefore, the following types of open burning are permissible as specified if burning is not prohibited by ordinances and regulations of governmental entities having jurisdiction.

The authority to conduct open burning under the provisions of this Regulation Rule does not exempt or excuse any person from the consequences, damages or injuries which may result from this conduct. It does not excuse or exempt any person from complying with all applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction even though the open burning is conducted in compliance with this Regulation Rule. Permission granted under the authority of the Commission under this Regulation Rule shall be subject to continuing review and may be withdrawn at any time. Permissible open burning is:

- (1) fires purposely set for the instruction and training of fire-fighting personnel when conducted under the supervision of:
  - (A) the North Carolina Insurance Department,
  - (B) North Carolina technical institutes, or
  - (C) the North Carolina community colleges, including:
    - (i) the North Carolina Fire College, and
    - (ii) the North Carolina Rescue College, which are conducted with the cooperation of one or both of these agencies;
- (2) fires purposely set for the instruction and training of fire-fighting personnel at permanent fire-fighting training facilities when conducted by a fire department, but these fires will not be permitted if the primary purpose in setting the fire is refuse disposal or recovery of salvageable materials. Factors which may be considered in determination of primary purpose include type, amount, and nature of combustible substances;
- (3) fires purposely set for the instruction and training of industrial fire-fighting personnel in training programs which are repetitious and continuous in nature. A plan containing program aspects related to possible air pollution including, but not limited to:
  - (A) nature and location of the exercise,
  - (B) nature of material to be burned,
  - (C) amount of each type of material to be burned,
  - (D) training objectives of the exercise, and
  - (E) insofar as it is known, a schedule of dates and times of the exercises,

has been submitted to and has been approved by the Director. These fires, however, will not be permitted if the primary purpose in setting the fire is refuse disposal or recovery of salvageable materials. Factors which may be considered in determination of primary purpose include type, amount and nature of combustible substances. Any deviations from the dates and times of exercises, including additions, postponements, and deletions, submitted in the schedule in the approved plan

will be communicated verbally to the appropriate departmental field office at least one hour before the change;

- (4) fires purposely set for the instruction and training of public and industrial fire-fighting personnel not covered under Subparagraphs (1), (2), or (3) of this Paragraph, if the training program aspects related to possible air pollution effects are approved in advance by the Air Quality Section and if these fire-fighting exercise conditions are met:

- (A) The appropriate departmental field office shall be initially notified orally or in writing at least 48 hours in advance of any burning conducted in conjunction with a fire training exercise. If initial notice is given orally, a written notification shall also be submitted within 24 hours after the initial oral notification. The notification, either written or oral, shall include:

- (i) the nature and location of the exercise,
- (ii) date and time that the exercise is to be held,
- (iii) nature of materials to be burned,
- (iv) amount of each type of material to be burned, and
- (v) training objectives of the exercise.

- (B) The burning of salvageable items, including but not limited to insulated wire and electric motors, shall not be exempted as a fire-training exercise, except as provided in Subpart (c) (iii) of this Subparagraph.

- (C) The regional office supervisor for the appropriate departmental field office may withhold approval for burnings purposely set for fire-fighting exercises, other than those described in Subparagraphs (1), (2), and (3) of this Paragraph, in the following cases:

- (i) when the required notice has not been received 48 hours in advance of the proposed burning;
- (ii) when the required notice does not include adequate details about:
  - (I) the nature and location of the exercise,
  - (II) date and time that the exercise is to be held,
  - (III) nature of objects or materials to be burned,
  - (IV) amount of each type of material to be burned, and
  - (V) training objectives of the exercises;
- (iii) when salvageable items are proposed to be burned in conjunction with the exercise, except that the regional office supervisor may allow an exercise involving the burning of a motor vehicle

if the sole objective is instruction on the techniques of fighting such a fire; the number of motor vehicles burned over a period of time by any one training unit or by several related training units shall be considered in determining the objective of the exercises;

- (iv) when the training unit has entered a formal or informal contractual relationship prior to any burning incorporated into a training exercise wherein the unit is compensated for conducting the burning;

- (5) fires purposely set by manufacturers of fire extinguishing materials or equipment, testing laboratories, or other persons approved by the Commission, for the purpose of testing or developing these materials or equipment in accordance with a valid standard qualification program;

- (6) fires purposely set to agricultural lands for disease and pest control and other accepted agricultural or wildlife management practices acceptable to the Commission;

- (7) fires purposely set to forest lands for forest management practices acceptable to the Division of forestry and the Commission;

- (8) fires purposely set in rural areas for rights-of-way maintenance only in instances where there are no other practicable or feasible methods of disposal and under conditions acceptable to the Commission;

- (9) camp fires and fires used solely for outdoor cooking and other recreational purposes, or for ceremonial occasions, or for human warmth and comfort;

- (10) open burning of leaves, tree branches or yard trimmings originating on the premises of private residences and burned on those premises in areas where no public pickup facilities are available. The burning shall be between 8:00 a.m. and 6:00 p.m. and shall not create a nuisance;

- (11) open burning for land clearing or right-of-way maintenance in areas other than those zoned solely residential or used primarily for residential purposes, if the following conditions are met:

- (A) Prevailing winds at the time of burning shall be away from any city or town or built-up area, the ambient air of which may be significantly affected by smoke, fly-ash, or other air pollutants from the burning;

- (B) The location of the burning shall be at least 1,000 feet from any dwelling located in a predominantly residential area other than a dwelling structure located on the property on

- which the burning is done;
- (C) The amount of dirt on the material being burned shall be minimized;
  - (D) Heavy oils, asphaltic materials, items containing natural or synthetic rubber, or any materials other than plant growth shall not be burned;
  - (E) Initial burning shall generally begin only between the hours of 9:00 a.m. and 3:00 p.m., and no combustible material shall be added to the fire between 3:00 p.m. on one day and 9:00 a.m. on the following day, except that, under favorable meteorological conditions, deviation from these hours of burning may be granted by the air pollution control agency having jurisdiction. The owner or operator of the open burning operation shall be responsible for obtaining written approval for burning during periods other than those specified in this Part;

- (12) fires for the disposal of dangerous materials where there is no alternative method of disposal, and burning is conducted in accordance with procedures acceptable to the Commission.

(e) General Prohibition. Notwithstanding any other prohibition in this Rule, after May 31, 1999, all open burning is prohibited from June 1 through August 31 in the following counties:

- (1) Cabarrus,
- (2) Gaston,
- (3) Iredell,
- (4) Lincoln,
- (5) Mecklenburg,
- (6) Rowan, and
- (7) Union.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

#### .0531 SOURCES IN NONATTAINMENT AREAS

##### (a) Applicability.

- (1) Ozone Nonattainment Areas. This Rule applies to major stationary sources and major modifications of sources of volatile organic compounds or nitrogen oxides for which construction commences after the area in which the source is located is designated in accordance with Part (A) or (B) of this Subparagraph and which are located in:
  - (A) areas designated in 40 CFR 81.334 as nonattainment for ozone, or
  - (B) any of the following areas and in that area only when the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone:
    - (i) Charlotte/Gastonia, consisting of

Mecklenburg and Gaston Counties; with the exception allowed under Paragraph (k) of this Rule;

- (ii) Greensboro/Winston-Salem/High Point, consisting of Davidson, Forsyth, and Guilford Counties and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River; or
- (iii) Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville Township in Granville County.

Violations of the ambient air quality standard for ozone shall be determined in accordance with 40 CFR 50.9.

- (2) Carbon Monoxide Nonattainment Areas. This Rule applies to major stationary sources and major modifications of sources of carbon monoxide located in areas designated in 40 CFR 81.334 as nonattainment for carbon monoxide and for which construction commences after the area in which the source is located is listed in 40 CFR 81.334 as nonattainment for carbon monoxide.
- (3) Redesignation to Attainment. If any county or part of a county to which this Rule applies is later designated in 40 CFR 81.334 as attainment for ozone or carbon monoxide, all sources in that county subject to this Rule before the redesignation date shall continue to comply with this Rule.

(b) For the purpose of this Rule the definitions contained in 40 CFR 51.165(a)(1) and 40 CFR 51.301 shall apply. The reasonable period specified in 40 CFR 51.165(a)(1)(vi)(C)(1) shall be seven years.

##### (c) This Rule is not applicable to:

- (1) complex sources of air pollution that are regulated only under Section .0800 of this Subchapter and not under any other rule in this Subchapter;
- (2) emission of pollutants at the new major stationary source or major modification located in the nonattainment area which are pollutants other than the pollutant or pollutants for which the area is nonattainment. (A major stationary source or major modification that is major for volatile organic compounds or nitrogen oxides is also major for ozone.);
- (3) emission of pollutants for which the source or modification is not major;
- (4) a new source or modification which qualifies for exemption under the provision of 40 CFR 51.165(a)(4); and
- (5) emission of the following volatile organic compounds:
  - (A) carbon monoxide,
  - (B) carbon dioxide,

- (C) carbonic acid,
- (D) metallic carbides or carbonates,
- (E) ammonium carbonate,
- (F) methane,
- (G) ethane,
- (H) trichlorofluoromethane (chlorofluorocarbon 11),
- (I) dichlorodifluoromethane (chlorofluorocarbon 12),
- (J) chlorodifluoromethane (chlorofluorocarbon 22),
- (K) trifluoromethane (fluorocarbon 23),
- (L) trichlorotrifluoroethane (chlorofluorocarbon 113),
- (M) dichlorotetrafluoroethane (chlorofluorocarbon 114),
- (N) chloropentafluoroethane (chlorofluorocarbon 115),
- (O) 1,1,1-trichloroethane (methyl chloroform),
- (P) dichloromethane (methylene chloride),
- (Q) dichlorotrifluoroethane (hydrochlorofluorocarbon 123),
- (R) tetrafluoroethane (hydrofluorocarbon 134a),
- (S) dichlorofluoroethane (hydrochlorofluorocarbon 141b),
- (T) chlorodifluoroethane (hydrochlorofluorocarbon 142b),
- (U) 2-chloro-1,1,1,2-tetrafluoroethane (hydrochlorofluorocarbon 124),
- (V) pentafluoroethane (hydrofluorocarbon 125),
- (W) 1,1,2,2-tetrafluoroethane (hydrofluorocarbon 134),
- (X) 1,1,1-trifluoroethane (hydrofluorocarbon 143a),
- (Y) 1,1-difluorocarbon (hydrofluorocarbon 152a), and
- (Z) perfluorocarbon compounds that fall into these classes:
  - (i) cyclic, branched, or linear completely fluorinated alkanes;
  - (ii) cyclic, branched, or linear completely fluorinated ethers with no unsaturations;
  - (iii) cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and
  - (iv) sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(d) 15A NCAC 2Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 2Q .0300 or .0500.

(e) To issue a permit to a source to which this Rule applies, the Director shall determine that the source will meet the following requirements:

- (1) The source will emit the nonattainment pollutant at a rate no more than the lowest

achievable emission ~~rate~~ rate;

- (2) The owner or operator of the proposed new or modified source has demonstrated that all major stationary sources in the State which are owned or operated by this person (or any entity controlling, controlled by, or under common control with this person) are subject to emission limitations and are in compliance, or on a schedule for compliance which is federally enforceable or contained in a court decree, with all applicable emission limitations and standards of this Subchapter which EPA has authority to approve as elements of the North Carolina State Implementation Plan for Air ~~Quality~~ Quality;
- (3) The source will obtain sufficient emission reductions of the nonattainment pollutant from other sources in the nonattainment area so that the emissions from the new major source and associated new minor sources will be less than the emissions reductions by a ratio of at least 1.00 to 1.15 for volatile organic compounds and nitrogen oxides and by a ratio of lesser than one to one for carbon monoxide. The baseline for this emission offset shall be the actual emissions of the source from which offset credit is obtained. Emission reductions must not include any reductions resulting from compliance (or scheduled compliance) with applicable rules in effect prior to the application. The difference between the emissions from the new major source and associated new minor sources of carbon monoxide and the emission reductions must be sufficient to represent reasonable further progress toward attaining the Ambient Air Quality Standards. The emissions reduction credits must also conform to the provisions of 40 CFR 51.165(a)(3)(ii)(A) through ~~(G)~~ (G); and
- (4) The North Carolina State Implementation Plan for Air Quality is being carried out for the nonattainment area in which the proposed source is located.

(f) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(g) To issue a permit to a source of a nonattainment pollutant, the Director shall determine, in addition to the other requirements of this Rule, that an analysis (produced by the permit applicant) of alternative sites, sizes,

production processes, and environmental control techniques for source demonstrates that the benefits of the source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(h) Approval of an application with regard to the requirements of this Rule shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of other rules of this Chapter and any other requirements under local, state, or federal law.

(i) When a source or modification subject to this Rule may affect the visibility of a Class I area named in Paragraph (c) of Rule .0530 of this Section, the following procedures shall be followed:

- (1) The owner or operator of the source shall provide an analysis of the impairment to visibility that would occur as a result of the source or modification and general commercial, industrial and other growth associated with the source or ~~modification-~~ modification;
- (2) The Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be at least 30 days prior to the publication of the notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on ~~visibility-~~ visibility;
- (3) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the application, an explanation of his decision or notice as to where the explanation can be ~~obtained-~~ obtained;
- (4) The Director shall only issue permits to those sources whose emissions will be consistent with making reasonable progress towards the national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class I areas when the impairment results from man-made air pollution. In making the decision to issue a permit, the Director shall consider the cost of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the ~~source-~~ source;

- (5) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

The requirements of this Paragraph shall not apply to nonprofit health or nonprofit educational institutions.

(j) The version of the Code of Federal Regulations incorporated in this Rule is that as of January 1, 1989, and does not include any subsequent amendments or editions to the referenced material.

(k) Paragraphs (e) and (g) of this Rule shall not apply to a new major stationary source or a major modification of a source of volatile organic compounds or nitrogen oxides for which construction commences after the area in which the source is located has been designated in accordance with Part (a)(1)(B) of this Rule and before the area is designated in 40 CFR 81.334 as nonattainment for ozone if the owner or operator of the source demonstrates, using a photochemical grid model, that the new source or modification will not contribute to or cause a violation. The model used shall be that maintained by the Division of Environmental Management. The Division of Environmental Management shall only run the model after the permit application has been submitted. The permit application shall be incomplete until the modeling analysis is completed. The owner or operator of the source shall apply such degree of control and obtain such offsets necessary to demonstrate the new source or modified source will not cause or contribute to a violation.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b); 150B-21.6.

## SECTION .0900 - VOLATILE ORGANIC COMPOUNDS

NOTE: Text shown in **Bold** in 15A NCAC 2D .0902 was adopted by the agency on March 9, 1995. These changes are pending review by the Rules Review Commission for an effective date of May 1, 1995.

### .0902 APPLICABILITY

(a) Rules .0925, .0926, .0927, .0928, .0932, and .0933 of this Section apply statewide, in accordance with Rule .0946 of this Section.

(b) Rule .0953 of this Section applies in Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Wake, Dutchville Township in Granville County, and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River in accordance with provisions set out in that Rule.

(c) With the exceptions stated in Paragraph (f) (g) of this Rule, this Section applies, in accordance with Rules .0907 and .0946 of this Section, to all sources of volatile



organic compounds located in an area designated in 40 CFR 81.334 as nonattainment for ozone.

(d) With the exceptions stated in Paragraph (f) (g) of this Rule, this Section shall apply, in accordance with Rule .0909 of this Section, to all sources of volatile organic compounds located in any of the following areas and in that area only when the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone:

- (1) ~~Charlotte/Gastonia, consisting of Mecklenburg and Gaston Counties;~~
- (1) (2) Greensboro/Winston-Salem/High Point, consisting of Davidson, Forsyth, and Guilford Counties and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River; or
- (2) (3) Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville Township in Granville County.

At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice of violation, the Director shall send written notification to all permitted facilities within the area of violation that are or may be subject to the requirements of this Section as a result of the violation informing them that they are or may be subject to the requirements of this Section. Violations of the ambient air quality standard for ozone shall be determined in accordance with 40 CFR 50.9.

(e) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Cabarrus, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, or Union County, North Carolina or York County, South Carolina, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Gaston or Mecklenburg County or in both counties. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. Compliance shall be in accordance with Rule .0909 of this

Section.

~~(f) (e)~~ This Section shall not apply to facilities in Mecklenburg county whose potential emissions of volatile organic compounds are less than 100 tons per year or to facilities in Gaston County until May 1, ~~1995~~ 1997. If Mecklenburg County is designated attainment in 40 CFR 81.334, all sources in Mecklenburg County subject to a rule in this Section before May 1, ~~1995~~ 1997, shall continue to comply with all such applicable rules in this Section. If any county or part of a county to which the Section applies in accordance with Paragraph (c) of this Rule is later designated in 40 CFR 81.334 as attainment for ozone, all sources in that county or that part of the county subject to a rule in this Section before the redesignation date shall continue to comply with all applicable rules in this Section.

~~(g) (f)~~ This Section does not apply to:

- (1) sources whose emissions of volatile organic compounds are not more than 15 pounds per day, except that this Section does apply to the manufacture and use of cutback asphalt and to gasoline service stations or gasoline dispensing facilities regardless of levels of emissions of volatile organic compounds;
- (2) sources used exclusively for chemical or physical analysis or determination of product quality and commercial acceptance provided:
  - (A) The operation of the source is not an integral part of the production process; ~~and~~
  - (B) The emissions from the source do not exceed 800 pounds per calendar month; and
  - (c) The exemption is approved in writing by the Director; or
- (3) emissions of volatile organic compounds during startup or shutdown operations from sources which use incineration or other types of combustion to control emissions of volatile organic compounds whenever the off-gas contains an explosive mixture during the startup or shutdown operation if the exemption is approved by the Director.

~~(h) (g)~~ Sources whose emissions of volatile organic compounds are not subject to limitation under this Section may still be subject to emission limits on volatile organic compounds in Rule .0524 or .0525 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

**.0909 COMPLIANCE SCHEDULES FOR SOURCES IN NEW NONATTAINMENT AREAS**

(a) With the exceptions in Paragraph (b) of this Rule, this Rule applies to all sources covered by Paragraph (d) or ~~(e)~~ of Rule .0902 of this Section.

(b) This Rule does not apply to:

- (1) sources in Mecklenburg County to which

Rules .0917 through .0938 apply and which are located at a facility where the total potential emissions of volatile organic compounds from all stationary sources at the facility is 100 tons per year or more, or

- (2) sources covered under Rule .0946, .0953, or .0954 of this Section.

(c) The owner or operator of any source subject to this Rule because of the application of Paragraph (d) or (e) ~~(a)~~ of Rule .0902 of this Section shall adhere to the following increments of progress and schedules:

- (1) if compliance is to be achieved by installing emission control equipment, replacing process equipment, or modifying existing process equipment:

(A) A permit application and a compliance schedule shall be submitted within six months after the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone;

(B) The compliance schedule shall contain the following increments of progress:

- (i) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;

- (ii) a date by which on-site construction or installation of the emission control and process equipment shall begin; and

- (iii) a date by which on-site construction or installation of the emission control and process equipment shall be completed;

(C) Final compliance shall be achieved within three years after the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone.

- (2) if compliance is to be achieved by using low solvent content coating technology:

(A) A permit application and a compliance schedule shall be submitted within six months after the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone;

(B) The compliance schedule shall contain the following increments:

- (i) a date by which research and development of low solvent content coating shall be completed if the Director determines that low solvent content coating technology has not been sufficiently researched and developed;

- (ii) a date by which evaluation of product quality and commercial acceptance shall be completed;

- (iii) a date by which purchase orders shall be issued for low solvent content coatings and process modifications;

- (iv) a date by which process modifications shall be initiated; and

- (v) a date by which process modifications shall be completed and use of low solvent content coatings shall begin;

(C) Final compliance shall be achieved within three years after the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone.

(d) The owner or operator shall certify to the Director within five days after the deadline, for each increment of progress in Paragraph (c) of this Rule, whether the required increment of progress has been met.

(e) If the Director requires a test to demonstrate that compliance has been achieved the owner or operator of sources subject to this Rule shall conduct a test and submit a final test report within six months after the stated date of final compliance.

(f) With such exception as the Director may allow, the owner or operator of any source subject to this Rule shall continue to comply with 15A NCAC 2D .0518 until such time as the source complies with applicable rules in this Section or until the final compliance date set forth in this Rule, whichever comes first. The Director may allow the following exceptions:

- (1) testing coating materials;

- (2) making or testing equipment or process modifications; or

- (3) adding or testing control devices.

(g) The owner or operator of any new source of volatile organic compounds not in existence or under construction as of the date that the Director notices in the North Carolina Register in accordance with Paragraph ~~(a)~~ (d) or (e) of Rule .0902 of this Section that the area is in violation of the ambient air quality standard for ozone, shall comply with all applicable rules in this Section upon start-up of the source.

(h) Paragraphs (c), (d), and (f) of this Rule will not apply to sources that are in compliance with applicable rules of this Section when the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone and that have determined and certified compliance to the satisfaction of the Director within six months after the Director notices in the North Carolina Register that the area is in violation.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

NOTE: Text shown in **Bold** in 15A NCAC 2D .0952 was adopted by agency on March 9, 1995. These changes are pending review by the Rules Review Commission for an effective date of May

1, 1995.

**.0952 PETITION FOR ALTERNATIVE CONTROLS**

(a) With the exceptions in Paragraph (b) of this Rule, this Rule applies to all sources covered by Paragraph (c), (d), or (e) of Rule .0902 of this ~~Section~~ Section.

(b) This Rule does not apply to:

- (1) sources in Mecklenburg County to which Rules .0917 through .0938 of this Section apply and which are located at a facility where the total potential emissions of volatile organic compounds from all stationary sources at the facility is 100 tons per year or more;
- (2) sources covered under Rule .0946 of this Section; or
- (3) sources covered under ~~Rules~~ Rule .0953 or .0954 of this Section.

(c) If the owner or operator of any source of volatile organic compounds subject to the requirements of this Section on May 1, 1997, July 1, 1994, can demonstrate that compliance with rules in this Section would be technologically or economically infeasible, he may petition the Director to allow the use of alternative operational or equipment controls for the reduction of volatile organic compound emissions. Petition shall be made for each source to the Director before May 1, 1997, January 1, 1995. The petition can be made only for sources in existence or under construction on May 1, 1997, June 30, 1994.

(d) If the owner or operator of any source of volatile organic compounds subject to the requirements of this Section because of the application of Paragraph (d) or (e) of Rule .0902 of this Section can demonstrate that compliance with rules in this Section would be technologically or economically infeasible, he may petition the Director to allow the use of alternative operational or equipment controls for the reduction of volatile organic compound emissions. Petition shall be made for each source to the Director within six months after the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone. The petition can be made only for sources in existence or under construction on the date that the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone.

(e) The petition shall contain:

- (1) the name and address of the company and the name and telephone number of a company officer over whose signature the petition is submitted;
- (2) a description of all operations conducted at the location to which the petition applies and the purpose that the volatile organic compound emitting equipment serves within the operations;

- (3) reference to the specific operational and equipment controls under the rules of this Section for which alternative operational or equipment controls are proposed;
- (4) a detailed description of the proposed alternative operational or equipment controls, the magnitude of volatile organic compound emission reduction which will be achieved, and the quantity and composition of volatile organic compounds which will be emitted if the alternative operational or equipment controls are instituted;
- (5) a plan, which will be instituted in addition to the proposed alternative operational or equipment controls, to reduce, where technologically and economically feasible, volatile organic compound emissions from other source operations at the facility, further than that required under the rules of this Section, if these sources exist at the facility, such that aggregate volatile organic compound emissions from the facility will in no case be greater through application of the alternative control than would be allowed through conformance with the rules of this Section;
- (6) a schedule for the installation or institution of the alternative operational or equipment controls in conformance with Rule .0907 or .0909 of this Section, as applicable; and
- (7) certification that emissions of all other air contaminants from the subject source are in compliance with all applicable local, state and federal laws and regulations.

The petition may include a copy of the permit application and need not duplicate information in the permit application.

(f) The Director and the U.S. Environmental Protection Agency (EPA) shall approve a petition for alternative control if:

- (1) The petition is submitted in accordance with Paragraph (e) of this Rule;
- (2) The Director determines that the petitioner cannot comply with the rules in question because of technological or economical infeasibility;
- (3) All other air contaminant emissions from the facility are in compliance with, or under a schedule for compliance as expeditiously as practicable with, all applicable local, state, and federal regulations;
- (4) The petition contains a schedule for achieving and maintaining reduction of volatile organic compound emissions to the maximum extent feasible and as expeditiously as practicable; and
- (5) A nuisance condition will not result from operation of the source as proposed in the

petition.

(g) When controls different from those specified in the appropriate emission standards in this Section are approved by the Director and the EPA, the permit shall contain a condition stating such controls.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

## SECTION .1400 - NITROGEN OXIDES

### .1402 APPLICABILITY

(a) The requirements of this Section shall only apply from April 1 through October 31.

(b) Notwithstanding any other provision of this Section, after May 31, 1999, Duke Power Company Allen Steam Station and Riverbend Steam Station in Gaston County shall comply with Rule .1406 of this Section and Transcontinental Pipe Line Corporation Station 150 in Iredell County shall comply with Rule .1409 of this Section.

(b)(c) With the exceptions stated in Paragraph (e)(e) of this Rule, this Section shall apply, in accordance with Rule .1403 of this Section, to all sources of nitrogen oxides located in any of the following areas, and in that area only, when the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone:

(1) ~~Charlotte/Gastonia, consisting of Mecklenburg and Gaston Counties;~~

(1) ~~(2)~~ Greensboro/Winston-Salem/High Point, consisting of Davidson, Forsyth, and Guilford Counties and the part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River to the extent needed as determined through photochemical grid modeling; or

(2) ~~(3)~~ Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville Township in Granville County to the extent needed as determined through photochemical grid modeling.

At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice of violation, the Director shall send written notification to all permitted facilities within the area of violation that are, or may be, subject to the requirements of this Section as a result of the violation. Violations of the ambient air quality standard for ozone shall be

determined in accordance with 40 CFR 50.9.

(d) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Cabarrus, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, or Union County, North Carolina or York County, South Carolina, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Gaston or Mecklenburg County or in both counties. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. Compliance shall be in accordance with Rule .0909 of this Section.

(e)(e) This Section does not apply to:

- (1) any sources not required to obtain an air permit under 15A NCAC 2Q .0102;
- (2) any incinerator, or thermal or catalytic oxidizer used primarily for the control of air pollution;
- (3) emergency generators;
- (4) emergency use internal combustion engines;
- (5) stationary combustion turbines constructed before January 1, 1979, that operate no more than 16 hours per calendar year;
- (6) facilities with a federally enforceable potential to emit nitrogen oxides of:
  - (A) less than 100 tons per year; and
  - (B) less than 560 pounds per calendar day from April 1 through October 31.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

### .1406 UTILITY BOILERS

(a) With the exception of Duke Power Company Allen Steam Station and Riverbend Steam Station, whose allowable emission rates are in Paragraph (c) of this Rule, The the owner or operator of ~~an~~ a utility boiler shall apply RACT according to Paragraph (b) of this Rule unless the owner or operator chooses the option of:

- (1) emissions averaging under Rule .1410 of this Section, or
- (2) seasonal fuel switching under Rule .1411 of this Section.

(b) Emissions of NO<sub>x</sub> from ~~an~~ a utility boiler shall not exceed the following RACT limitations for NO<sub>x</sub>:

**MAXIMUM ALLOWABLE NO<sub>x</sub> EMISSION RATES FOR UTILITY BOILERS  
(POUNDS PER MILLION BTU)**

| Fuel/Boiler Type  | Firing Method |      |
|-------------------|---------------|------|
|                   | Tangential    | Wall |
| Coal (Dry Bottom) | 0.45          | 0.50 |
| Oil and/or Gas    | 0.20          | 0.30 |

(c) After May 31, 1999, the allowable nitrogen oxide emission rate for the coal-fired units at Duke Power Company Allen Steam Station and Riverbend Steam Station shall be 0.405 pounds per million BTU based on a 24-hour rolling average during the months of June, July, and August. Duke Power Company shall submit by April 1, 1996, a permit application with compliance schedule to bring these units into compliance with this Rule by June 1, 1999. The compliance schedule shall contain the increments of progress set out in Rule .1403(b)(2)(B) of this Section.

(d)(e) If necessary, the owner or operator shall install combustion modification technology or other NO<sub>x</sub> control technology in order to comply with the applicable RACT limitation set forth in Paragraph (b) of this Rule. If, after reasonable effort as defined in Rule .1401 of this Section, the emissions from a utility boiler are greater than the applicable RACT limitation, or the requirements of this Rule is not RACT for the particular utility boiler, the owner or operator may petition the Director for an alternative RACT limitation or standard in accordance with Rule .1412 of this Section.

(e)(d) Compliance with the RACT limitation established for a utility boiler shall be determined using a continuous emissions monitoring system.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).*

**.1409 STATIONARY INTERNAL COMBUSTION ENGINES**

(a) With the exception of Transcontinental Pipe Line Corporation Station 150 in Iredell County, whose allowable emission rates are in Paragraph (c) of this Rule, The the owner or operator of a stationary internal combustion engine having a rated capacity of 650 horsepower or more and subject to the requirements of this Section as determined by Rule .1402 of this Section shall apply RACT in accordance with Paragraph (b) of this Rule.

(b) Emissions of NO<sub>x</sub> from a stationary internal combustion engine shall not exceed the following RACT limitations:

**MAXIMUM ALLOWABLE NO<sub>x</sub> EMISSION RATES FOR  
STATIONARY INTERNAL COMBUSTION ENGINES  
(GRAMS PER HORSEPOWER HOUR)**

| Engine Type          | Fuel Type | Limitation |
|----------------------|-----------|------------|
| Rich-burn            | Gaseous   | 2.5        |
| Lean-burn            | Gaseous   | 2.5        |
| Compression Ignition | Liquid    | 8.0        |

(c) After May 31, 1999, the allowable nitrogen oxide emission rate for the stationary internal combustion engines at Transcontinental Pipe Line Corporation Station 150 in Iredell County shall be seven tons per day based on a 24-hour block average beginning at noon during the months of June, July, and August. Transcontinental Pipe Line Corporation shall submit by April 1, 1996, a permit application with compliance schedule to bring these engines into compliance with this Rule by June 1, 1999. The compliance schedule shall contain the increments of progress set out in Rule .1403(b)(2)(B) of this Section.

(d)(e) If necessary, the owner or operator shall install NO<sub>x</sub> control technology in order to comply with the applicable RACT limitation set forth in Paragraph (b) of this Rule. If, after reasonable effort as defined in Rule .1401 of this Section, the emissions from a stationary internal combustion engine are greater than the applicable RACT limitation, or the requirements of this Rule is not RACT for the particular stationary internal combustion engine, the owner or operator shall petition the Director for an alternative RACT limitation or standard in accordance with Rule .1412 of this Section.

(e)(d) Compliance with the RACT limitation established for a stationary internal combustion engine shall be determined using annual source testing.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).*

**SECTION .1700 - REFORMULATED  
GASOLINE REQUIREMENTS**

**.1701 REFORMULATED GASOLINE  
REQUIREMENTS**

(a) After March 31, 1999, only reformulated gasoline shall be sold in the following counties:

- (1) Cabarrus,
- (2) Gaston,
- (3) Iredell,
- (4) Lincoln,
- (5) Mecklenburg,
- (6) Rowan, and
- (7) Union.

(b) For the purpose of this Section, "reformulated gasoline" means any gasoline whose formulation has been certified under 40 CFR 80.40, that meets each of the standards and requirements prescribed under 40 CFR Part 80.41 (e) or (f) for Control Region 1 and that contains less than the maximum concentration of the maker specified in 40 CFR 80.82 that is allowed for reformulation under 40 CFR 80.82.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(7), (10).*

**.1702 COMPLIANCE AND REQUIREMENTS**

(a) This Rule does not apply until March 31, 1999.

(b) Refiners, importers, and oxygenate blenders shall comply with all applicable requirements contained in 40 CFR 80.40 through 80.69 and 80.71 through 80.79, for Phase II reformulated gasoline.

(c) Refiners, importers, oxygenate blenders, carriers, distributors, resellers, retailers, or wholesale-purchasers who sell, offer for sale, dispense, supply, offers for supply, store, transport, or cause the transportation of any reformulated gasoline or reformulated gasoline blendstock for oxygenated blending shall maintain records in accordance with 40 CFR 80.74 (Record Keeping Requirements).

(d) When any person transfers custody or title to any reformulated gasoline or reformulated gasoline blendstock for oxygenated blending, other than when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility, the transferor shall provide to the transferee documents that comply with the requirements of 40 CFR 80.77 (Product Transfer Documentation).

(e) No person may manufacture and sell or distribute, offer for sale or distribution, dispense, supply, offer for supply, store, transport, or cause the transportation of any gasoline represented as reformulated or intended for sale or use in any county identified in Rule .1701 of this Section unless the requirements of 40 CFR 80.78 (Controls and Prohibitions on Reformulated Gasoline) and 80.41 (e) or (f) (Standards and Requirements for Reformulated Gasoline) are met. Liability for violations

of 40 CFR 80.78 shall be determined in accordance with 40 CFR 80.79, and compliance shall be determined in accordance with 40 CFR 80.78(c) and 80.46 (Measurements of Reformulated Gasoline Fuel Parameters).

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(7), (10).*

**SECTION .1800 - CLEAN FUEL FLEETS**

**.1801 PURPOSE, SCOPE AND APPLICABILITY**

(a) The purpose of this Section is to establish Clean Fuel Fleet (CFF) program requirements for the purchase and operation of alternatively fueled vehicles in the following counties:

- (1) Mecklenburg;
- (2) Gaston;
- (3) Cabarrus;
- (4) Iredell;
- (5) Lincoln;
- (6) Rowan; and
- (7) Union.

(b) For vehicles purchased after model year 1995, alternatively fueled vehicles shall be purchased according to the following schedule:

- (1) Light-duty vehicles:
  - (A) For Federal vehicles 25 percent in 1996, 33 percent in 1997, 50 percent in 1998, 75 percent in 1999, and 100 percent in 2001;
  - (B) For State vehicles 10 percent in 1996, 15 percent in 1997, 25 percent in 1998, 50 percent in 1999, 70 percent in 2000, and 100 percent in 2001;
  - (c) For Fuel Provider vehicles 30 percent in 1996, 50 percent in 1997, 70 percent in 1998, 90 percent in 1999, and 100 percent in 2001; and
  - (D) For Municipal and Private vehicles 50 percent in 1999, 70 percent in 2000, and 100 percent in 2001;
- (2) Heavy-duty vehicles: 50 percent in 1998.

*Statutory Authority 143-215.3(a)(1); 143-215.107(a)(3); 143-215.108(c)(7).*

**.1802 DEFINITIONS**

For the purpose of this Section, the definitions contained in 40 CFR Parts 86 and 88 and the following definitions shall apply:

- (1) "Base gasoline" means gasoline which meets the following requirements:

Specifications of Base Gasoline Used as  
Basis for Reactivity Readjustment:

|                         |             |
|-------------------------|-------------|
| <u>API gravity.....</u> | <u>57.8</u> |
| <u>Sulfur, ppm.....</u> | <u>317</u>  |

|                          |        |
|--------------------------|--------|
| Color.....               | Purple |
| Benzene, vol. (%).....   | 1.35   |
| Reid vapor pressure..... | 8.7    |
| Drivability.....         | 1195   |
| Antiknock index.....     | 87.3   |

Distillation, D-86°F

|          |     |
|----------|-----|
| IBP..... | 92  |
| 10%..... | 126 |
| 50%..... | 219 |
| 90%..... | 327 |
| EP.....  | 414 |

Hydrocarbon Type, Vol. % FIA

|                |      |
|----------------|------|
| Aromatics..... | 30.9 |
| Olefins.....   | 8.2  |
| Saturates..... | 60.9 |

- (2) "Clean alternative fuel" means any fuel (including methanol, ethanol, or other alcohols (including any mixture thereof containing 85 percent or more by volume of such alcohol with gasoline or other fuels), diesel, natural gas, liquefied petroleum gas, and hydrogen) or power source (including electricity) used in a clean-fuel vehicle that complies with the standards and requirements applicable to such vehicle under this Section when using such fuel or power source. In the case of flexible or dual fuel vehicle, the term clean alternative fuel means only a fuel with respect to which such vehicle was certified as a clean-fuel vehicle meeting the standards applicable to clean-fuel vehicles under Rule .1803 of this Section when operating on clean alternative fuel.
- (3) "Clean fuel vehicle" means a vehicle in a class or category of vehicles which has been certified to meet for any model year the clean-fuel vehicle standards applicable under this Section for that model year.
- (4) "Covered area" means the Charlotte/Gastonia ozone maintenance area consisting of Mecklenburg, Gaston, Cabarrus, Union, Rowan, Iredell, and Lincoln Counties.
- (5) "Covered fleet" means:
  - (a) for federal and fuel provider fleets: 20 or more vehicles through model year 2000 and 10 or more vehicles starting in model year 2001;
  - (b) for state fleets: 20 or more vehicles through model year 1998 and 10 or more vehicles starting in 1999; and
  - (c) for municipal/private fleets: 10 or more vehicles starting in model year 1999; which are owned or operated by a single person or government entity. In determining the number of vehicles owned or operated by a single person or government entity for purposes of this Section, all motor vehicles owned or operated, leased or otherwise controlled by

such person or government entity, by any person who controls such person or government entity, by any person controlled by such person or government entity, and by any person under common control with such person or government entity shall be treated as owned by such person or government entity. The term covered fleet shall not include motor vehicles held for lease or rental to the general public, motor vehicles held for sale by motor vehicle dealers (including demonstration vehicles), motor vehicles used for motor vehicle manufacturer product evaluations or tests, law enforcement and other emergency vehicles, or nonroad vehicles (including farm and construction vehicles).

- (6) "Covered fleet vehicle" means only a motor vehicle which is:
  - (a) in a vehicle class for which standards are applicable under this Section; and
  - (b) in a covered fleet which is centrally fueled (or capable of being centrally fueled).

No vehicle which under normal operations is garaged at a personal residence at night shall be a vehicle which is capable of being centrally fueled within the meaning of this Section.
- (7) "Dealer" means any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser.
- (8) "Federal vehicles" means fleets owned or operated by an agency, department, or instrumentality of the United States. If the Secretary of Defense finds that inclusion of certain vehicles could have an adverse impact on the national security, such vehicles shall be exempted from the provisions of any clean fuel fleet vehicle credit program.
- (9) "Fuel provider" means:
  - (a) any person engaged in the importing, refining, or processing of crude oil to produce motor fuel;
  - (b) any person engaged in the importation, production, storage, transportation, distribution, or sale of motor fuel; and
  - (c) any person engaged in generating, transmitting, importing, or selling at wholesale or retail electricity.
- (10) "Manufacturer" means any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad



- vehicle engines, but shall not include any dealer with respect to new motor vehicles, new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines received by him in commerce.
- (11) "Model year" means for fleet purchase requirements as September 1 through August 31.
- (12) "Motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway.
- (13) "Motor vehicle or engine part manufacturer" means any person engaged in the manufacturing, assembling or rebuilding of any device, system, part, component or element of design which is installed in or on motor vehicles or motor vehicle engines.
- (14) "Municipal and Private vehicles" means fleets that are owned or operated by members of the general public, local municipalities, and county governments that are subject to the requirements of this Section.
- (15) "New motor vehicle" means, with respect to vehicles or engines imported or offered for importation, a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser.
- (16) "New motor vehicle engine" means an engine in a new motor vehicle or a motor vehicle engine the equitable or legal title to which has never been transferred to the ultimate purchaser.
- (17) "Nonmethane organic gas (NMOG)" means the sum of nonoxygenated and oxygenated hydrocarbons contained in a gas sample, including, at a minimum, all oxygenated organic gases containing five or fewer carbon atoms (i.e., aldehydes, ketones, alcohols, ethers, etc.), and all known alkanes, alkenes, alkynes, and aromatics containing 12 or fewer carbon atoms. In the case of vehicles using fuels other than base gasoline, the level of NMOG emissions shall be adjusted based on the reactivity of the emissions relative to vehicles using base gasoline.
- (18) "Nonroad engine" means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition.
- (19) "Nonroad vehicle" means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.
- (20) "State vehicles" means fleets owned or operated by an agency of the State of North Carolina. If the Secretary of Defense finds that inclusion of certain vehicles (i.e., National Guard vehicles) could have an adverse impact on the national security, such vehicles shall be exempted from

the provisions of any clean fuel fleet vehicle credit program.

- (21) "Ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases such new motor vehicle or new engine for purposes other than resale.

Statutory Authority 143-215.3(a)(1); 143-215.107(a)(3); 143-215.108(c)(7).

## 1803 PROGRAM REQUIREMENTS

### (a) Emission Standards:

- (1) The procedures in 40 CFR 88.104-94 shall be used to determine the clean-fuel vehicle tailpipe emission standards for light-duty vehicles and light-duty trucks.
- (2) The procedures in 40 CFR 88.105-94 shall be used to determine the clean-fuel fleet emission standards for heavy-duty engines.
- (3) The procedures in 40 CFR 88.311-94 shall be used to determine the emissions standards for inherently low-emission vehicles (ILEVs).

(b) Credit. The procedures in 40 CFR 88.304-94 shall be used to determine the clean-fuel fleet credit program.

### (c) Labeling Requirements:

- (1) The procedures in 40 CFR 88.305-94 shall be used to determine the clean-fuel fleet vehicle labeling requirements for heavy-duty vehicles.
- (2) The procedures in 40 CFR 88.312-94 shall be used to determine the inherently low-emission vehicle labeling requirements.

(d) Conversions. The procedures in 40 CFR 88.306-94 shall be used to determine the requirements for a converted vehicle to qualify as a clean-fuel fleet vehicle.

(e) Federal Fleets. The procedures in 40 CFR 88.310-94 shall be used to determine the applicability to covered federal fleets.

(f) Incentives for ILEVs. The procedures in 40 CFR 88.313-94 shall be used to determine the incentives for the purchase of inherently low-emission vehicles.

Statutory Authority 143-215.3(a)(1); 143-215.107(a)(3); 143-215.108(c)(7).

\*\*\*\*\*

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rules cited as 15A NCAC 10B .0202, .0203, .0214, and 10D .0003 with changes from the proposed text noticed in the Register, Volume 9, Issue 18, pages 1427 - 1460.

Proposed Effective Date: July 1, 1995.

Reason for Proposed Action:

15A NCAC 10B .0202 - To regulate the harvest of bear



by setting seasons.

**15A NCAC 10B .0203** - To regulate harvest of deer by setting seasons.

**15A NCAC 10B .0214** - To regulate harvest of wildcat by setting seasons.

**15A NCAC 10D .0003** - To amend/set regulations, seasons and bag limits on game lands.

**Comment Procedures:** Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from April 3, 1995 through May 3, 1995. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, N.C. 27604-1188.

**Editor's Note:** An agency may not adopt a rule that differs substantially from the text of a proposed rule published in the *Register*, unless the agency publishes the text of the proposed different rule and accepts comments on the new text for at least 30 days after the publication of the new text.

**Fiscal Note:** This Rule does not affect the expenditures or revenues of local government or state funds.

## CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

### SUBCHAPTER 10B - HUNTING AND TRAPPING

#### SECTION .0200 - HUNTING

#### .0202 BEAR

(a) Open Seasons shall be from the:

(1) Monday on or nearest October 15 to the Saturday before Thanksgiving and the third Monday after Thanksgiving to January 1 in and west of the boundary formed by NC 16 from the Virginia State line to Wilkesboro and NC 18 from Wilkesboro to the South Carolina State line.

(2) Second Monday in November to the following Saturday and the third Monday after Thanksgiving to the following Wednesday in all of Beaufort, Camden, Craven, Dare, Gates, Hyde, Jones, Pamlico, Pasquotank, Tyrrell, and Washington Counties counties; and in and in the following parts of counties: that part of

Bertie: County that part southeast of US 17, and that part of

Chowan: County that part north of a line formed by SR 1002, SR 1222 and SR ~~1221~~ 1221. and in

Currituck: County: except Knotts Island and

the Outer Banks that part west of the Intra-coastal waterway that is south or west of a line formed by Highway 34 to Silgo, Highway 168 through Bareo, then Highway 158 to the Intra-coastal waterway; also that part east of the Intra-coastal waterway and west of a line formed through the center of Currituck Sound and North Landing River. Hertford: that part east of NC 45.

Martin: that part east of US 17.

(3) Second Monday in November to January 1 in all of Bladen, Carteret, Duplin, New Hanover, Onslow and Pender Counties; counties and in the following parts of counties: in that part of

Cumberland: County that part south of NC 24 and east of the Cape Fear River; River. and in that part of

Sampson county that part south of NC 24.

(4) Second Monday in December to January 1 in Brunswick and Columbus Counties. counties.

(b) No Open Season. There is no open season in any area not included in Paragraph (a) of this Rule or in those parts of counties included in the following posted bear sanctuaries:

Avery, Burke and Caldwell Counties coun

ties--Daniel Boone bear sanctuary

Beaufort, Bertie and Washington Counties

counties--Bachelor Bay bear sanctuary

Beaufort and Pamlico Counties counties--Gum

Swamp bear sanctuary

Bladen County--Suggs Mill Pond bear sanctuary

Brunswick County--Green Swamp bear sanctuary

Buncombe, Haywood, Henderson and

Transylvania Counties counties--Pisgah bear sanctuary

Carteret, Craven and Jones Counties coun

ties--Croatan bear sanctuary

Clay County--Fires Creek bear sanctuary

Currituck County--North River bear sanctuary

Dare County--Bombing Range bear sanctuary

Haywood County--Harmon Den bear sanctuary

Haywood County--Sherwood bear sanctuary

Hyde County--Gull Rock bear sanctuary

Hyde County--Pungo River bear sanctuary

Jackson County--Panther-town-Bonas Defeat bear sanctuary

Jones and Onslow Counties counties--Hofmann bear sanctuary

Macon County--Standing Indian bear sanctuary

Macon County--Wayah bear sanctuary

Madison County--Rich Mountain bear sanctuary

McDowell and Yancey Counties counties--Mt.

Mitchell bear sanctuary

Mitchell and Yancey Counties counties--Flat Top bear sanctuary

Wilkes County--Thurmond Chatham bear sanctu

ary

(c) Bag limits shall be:

- (1) daily, one;
- (2) possession, one;
- (3) season, one.

(d) Kill Reports. The carcass of each bear shall be tagged and the kill reported as provided by 15A NCAC 10B .0113.

*Statutory Authority G.S. 113-134; 113-291.2; 113-291.7; 113-305.*

**.0203 DEER (WHITE-TAILED)**

(a) Closed Season. All counties and parts of counties not listed under the open seasons in Paragraph (b) in this Rule are closed to deer hunting.

(b) Open Seasons (All Lawful Weapons)

- (1) Male Deer With Visible Antlers. Male deer with antlers or spikes protruding through the skin, as distinguished from knobs or buttons covered by skin or velvet, may be taken during the following seasons:

(A) Monday on or nearest October 15 to January 1 in the following counties and parts of counties:

|           |           |             |            |
|-----------|-----------|-------------|------------|
| Beaufort  | Edgecombe | Nash        | Scotland** |
| Bertie    | Franklin  | New Hanover | Tyrrell    |
| Bladen    | Gates     | Northampton | Vance      |
| Brunswick | Greene    | Onslow      | Wake       |
| Camden    | Halifax   | Pamlico     | Warren     |
| Carteret  | Hertford  | Pasquotank  | Washington |
| Chowan    | Hoke      | Pender      | Wayne      |
| Columbus* | Hyde      | Perquimans  | Wilson     |
| Craven    | Johnston  | Pitt        |            |
| Currituck | Jones     | Richmond**  |            |
| Dare      | Lenoir    | Robeson     |            |
| Duplin    | Martin    | Sampson     |            |

Cumberland: That part south of NC 24 or east of I-95.

Harnett: That part west of NC 87.

Moore\*\*: All of the county except that part north of NC 211 and west of US 1.

\*Unlawful to hunt or kill deer in Lake Waccamaw or within 50 yards of its shoreline.

\*\*See 15A NCAC 10D .0003(e)(2) for seasons on Sandhills Game Land.

(B) Monday of Thanksgiving week to third Saturday after Thanksgiving Day in the following counties and parts of counties:

|           |         |         |        |
|-----------|---------|---------|--------|
| Alexander | Davie   | Lincoln | Wilkes |
| Alleghany | Forsyth | Stokes  | Yadkin |
| Ashe      | Gaston  | Surry   |        |
| Catawba   | Iredell | Watauga |        |

(C) Monday of Thanksgiving week to third Saturday after Thanksgiving Day in the following counties and parts of counties:

|          |           |          |              |
|----------|-----------|----------|--------------|
| Avery    | Clay      | Jackson  | Polk         |
| Buncombe | Cleveland | Macon    | Rutherford   |
| Burke    | Graham    | Madison  | Swain        |
| Caldwell | Haywood   | McDowell | Transylvania |
| Cherokee | Henderson | Mitchell | Yancey       |

(D) Monday before Thanksgiving week to January 1 in the following counties and parts of counties:

|          |          |             |            |
|----------|----------|-------------|------------|
| Alamance | Davidson | Mecklenburg | Rockingham |
|----------|----------|-------------|------------|

|          |           |            |        |
|----------|-----------|------------|--------|
| Anson    | Durham    | Montgomery | Rowan  |
| Cabarrus | Granville | Orange     | Stanly |
| Caswell  | Guilford  | Person     | Union  |
| Chatham  | Lee       | Randolph   |        |

Cumberland: That part north of NC 24 and west of I-95.

Harnett: That part east of NC 87.

Moore: That part north of NC 211 and west of US 1.

- (2) Deer of Either Sex. Deer of either sex may be taken during the open seasons and in the counties and portions of counties listed in this Subparagraph:
- (A) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the first Saturday in October to January 1 in those parts of Hyde, Tyrrell and Washington ~~Counties~~ counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Camden, Gates and Pasquotank ~~Counties~~ counties known as the Dismal Swamp National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge and those parts of Anson and Richmond ~~Counties~~ counties known as Pee Dee National Wildlife Refuge.
- (B) The open either-sex deer hunting dates established by the appropriate military commands during the period from Monday on or nearest October 15 to January 1 in that part of Brunswick County known as the Sunny Point Military Ocean Terminal, in that part of Craven County known and marked as Cherry Point Marine Base, in that part of Onslow County known and marked as the Camp Lejeune Marine Base, on Fort Bragg Military Reservation, and on Camp Mackall Military Reservation.
- (C) Second Saturday in October for youth either sex deer hunting by permit only on a designated portion of Belews Creek Steam Station in Stokes County.
- (D) The second Saturday in December in all of Buncombe, Catawba, Gaston, Haywood, Henderson, Lincoln, Madison, Mitchell, ~~Polk~~, Transylvania, and Yancey Counties and the following parts of counties:  
Avery: That part south of the Blue Ridge Parkway.
- (E) Wednesday to Saturday of the week following Thanksgiving in all of Cumberland, ~~Dare~~, Harnett, Hoke, Mecklenburg, Tyrrell, Union, and Wilson ~~Counties~~ counties and in the following parts of counties:  
Cabarrus: That part west of US 52 and east of I-85.  
Cumberland: That part west of I-95.  
Dare: except the Outer Banks north of Whalebone.  
~~Johnston:~~ ~~That part north of US 70 or west of I-95.~~  
Richmond: That part east of a line formed by US 220 from the Montgomery County line to Rockingham and US 1 from Rockingham to the South Carolina line, except on game lands.  
Rowan: That part west of US 52.  
~~Sampson:~~ ~~That part north of NC 24.~~  
Scotland: That part north of US 74 except game lands.  
Wayne: That part north of US 70.
- (F) Wednesday of the week following Thanksgiving to Saturday of next succeeding week in all of Alamance, Caswell, Camden, ~~Chatham~~, ~~Franklin~~, Greene, Guilford, Lee, ~~Orange~~, Pasquotank, Person, Rockingham, Stanly, ~~Vance~~, and Washington ~~Counties~~ counties and in the following parts of counties:  
Cabarrus: That part east of US 52.  
Carteret: All of the county except game lands.  
Chowan: That part north of US 17 and west of NC 32.  
Columbus: That part west of US 74, SR 1005, and SR 1125.  
Cumberland: That part east of I-95.  
Currituck: All of the county except the Outer Banks.  
Davidson: ~~except~~ Except on game lands southeast of NC 49.  
Durham: All of the county except on game lands. ~~Butner Falls of Neuse Game Land.~~  
~~Granville:~~ ~~All of the county except Butner Falls of Neuse Game Land.~~  
Johnston: That part north of US 70 or west of I-95.  
~~Lenoir:~~ ~~That part west of NC 11.~~  
~~Montgomery:~~ ~~All of the county except Uwharrie Game Land.~~  
Moore: All of the county except Sandhills Game Land.  
Nash: That part south of US 64.  
Orange: All of the county except on game lands.  
Randolph: All of the county except on game lands.

- Richmond: That part east of Little River and west of a line formed by US 220 from the Montgomery County line to Rockingham and US 1 from Rockingham to the South Carolina line.
- Robeson: That part east of I-95.
- Rowan: That part east of US 52, ~~except on game lands.~~
- Wake: All of the county except on game lands. ~~Butner Falls of Neuse Game Land.~~
- Wayne: That part south of US 70.
- (G) Monday of Thanksgiving week to the third Saturday after Thanksgiving Day in that part of Buncombe County east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of SR 3503, NC 280 and SR 3501.
- (H) Wednesday of the week following Thanksgiving to January 1 in all of Brunswick, Edgecombe, Franklin, Gates, Hertford, Lenoir, Northampton, Perquimans, Pitt, Sampson, Vance, and Warren ~~Counties~~, counties, and in the following parts of counties:
- Anson: All of the county except game lands.
- Beaufort: All of the county except game lands.
- Bertie: All of the county except Roanoke River Wetlands and Roanoke River National Wildlife Refuge.
- Bladen: All of the county except game lands.
- Chatham: All of the county except game lands.
- Chowan: That part south of US 17 or east of NC 32.
- Columbus: That part east of a line formed by US 74, SR 1005, and SR 1125.
- Craven: All of the county except game lands.
- Dare: That part of the Outer Banks north of Whalebone.
- Duplin: All of the county except game lands.
- Granville: All of the county except game lands.
- Halifax: All of the county except Roanoke River Wetlands.
- Hyde: All of the county except game lands.
- Johnston: That part south of US 70 and east of I-95.
- Jones: All of the county except game lands.
- ~~Lenoir: That part east of NC 11.~~
- Martin: All of the county except Roanoke River Wetlands.
- Montgomery: All of the county except game lands.
- Nash: That part north of US 64.
- New Hanover: That part north of US 74, except game lands.
- Onslow: All of the county except game lands.
- Pamlico: All of the county except game lands.
- Pender: All of the county except game lands.
- Richmond: That part west of Little River.
- ~~Sampson: That part south of NC 24.~~
- (I) The second Wednesday after Thanksgiving to the third Saturday after Thanksgiving in all of Alexander, Alleghany, Ashe, Cleveland, Davie, Forsyth, Iredell, Rutherford, Stokes, Surry, ~~and Wilkes and Yadkin counties.~~ Counties.
- (J) The third Friday after Thanksgiving to the third Saturday after Thanksgiving in all of ~~Alleghany, Ashe, Burke, Caldwell, Forsyth, McDowell, Polk, and Watauga counties.~~ and Yadkin Counties.
- (K) In those counties or parts of counties listed in Paragraph (b) (2) (H), except on game lands, two antlerless deer may be taken during that part of the regular gun season in which no other either sex season is open and must be tagged with the Antlerless deer tag or the Bonus Antlerless deer tag.
- (L) In those counties or parts of counties listed in Part (b)(2)(F), except on game lands, one antlerless deer may be taken during that part of the regular gun season in which no other either-sex season is open and must be tagged with the Antlerless deer tag.
- (M) In Alexander, Alleghany, Ashe, Davie, Forsyth, Iredell, Stokes, Surry, Wilkes, and Yadkin counties except on Game Lands, one antlerless deer may be taken during that part of the regular gun season and that part of the muzzle-loading season in which no other either-sex season is open and must be tagged with the Antlerless deer tag.
- (3) Game Lands Either-Sex Hunts. On the hunt dates indicated, deer of either sex may be taken by permittees engaged in managed hunts conducted on game lands in accordance with 15A NCAC 10D .0003(e)(4) and (5).
- (c) Open Seasons (Bow and Arrow)
- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow during the following seasons:
- (A) Monday on or nearest September 10 to the fourth Saturday thereafter in the counties and parts of counties

having the open season for male deer specified by Part (A) of Subparagraph (b)(1) of this Rule, except on the Sandhills Game Land and the area known as the Outer Banks in Currituck County.

- (B) Monday on or nearest September 10 to the second Saturday before Thanksgiving in the counties and parts of counties having the open seasons for male deer specified by Part (B) of Subparagraph (b)(1) of this Rule.
- (C) Monday on or nearest September 10 to the fourth Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving in the counties and parts of counties having the open seasons for male deer specified by Part (C) of Subparagraph (b)(1) of this Rule.
- (D) Monday on or nearest September 10 to the third Saturday before Thanksgiving in the counties and parts of counties having the open season for male deer specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.

(2) Restrictions

- (A) Dogs may not be used for hunting deer during the bow and arrow season.
- (B) It is unlawful to carry any type of firearm while hunting with a bow during the bow and arrow deer hunting season.
- (C) Only bows and arrows of the types authorized in 15A NCAC 10B .0116 for taking deer may be used during the bow and arrow deer hunting season.

(d) Open Seasons (Muzzle-Loading Rifles and Shotguns)

- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph, deer may be taken only with muzzle-loading firearms during the following seasons:

- (A) Monday on or nearest October 8 to the following Saturday in the counties and parts of counties having the open seasons for male deer specified by Items (A) and (C) of Subparagraph (b)(1) of this Rule, except on Sandhills Game Land and the area known as the Outer Banks in Currituck County.
- (B) Monday to Saturday of the week preceding Thanksgiving week in the counties and parts of counties having the open seasons for male deer specified by Item (B) of Subparagraph (b)(1) of this Rule.
- (C) Monday to Saturday of the second week before Thanksgiving week in the counties and parts of counties having the open season for male deer specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.

(2) Restrictions

- (A) Deer of either sex may be taken during muzzle-loading firearms season in those counties or parts of counties listed in Parts (A) and (D) of Subparagraph (b) (1) of this Rule and deer of either sex may be taken on the last day of muzzle-loading firearms season in those counties or parts of counties listed in Part (B) and (C) of Subparagraph (b) (1) of this Rule.
- (B) Dogs may not be used for hunting deer during the muzzle-loading firearms seasons.
- (C) Pistols may not be carried while hunting deer during the muzzle-loading firearms seasons.

(e) Bag Limits: Daily, two; possession, five, one of which must be antlerless; season, five, one of which must be antlerless. In those areas listed in Part (b)(2)(I) of this Rule one additional antlerless deer may be taken provided it is tagged with the Bonus Antlerless deer tag. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin. The antlerless bag limits described in this Rule do not apply to antlerless deer harvested in areas covered in the Deer Management Assistance Program as described in GS 113-291.2(e). Individual daily antlerless bag limits on these areas are determined by the number of special tags, issued by the Division of Wildlife Management as authorized by the Executive Director, that are in the possession of the hunter. Season antlerless bag limits are set by the number of tags available. All antlerless deer harvested on these areas, regardless of the date of harvest, must be tagged with these special tags but do not have to be tagged with Big Game Tags provided with the hunting license.

- (f) Kill Reports. The carcass of each deer shall be tagged and the kill reported as provided by 15A NCAC 10B .0113.

*Statutory Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2.*

**.0214 WILDCAT (BOBCAT)**

(a) Open Seasons:

- (1) Third Monday after Thanksgiving to January 31 in and west of Stokes, Forsyth, Davie, Iredell, Mecklenburg and Union Counties, except there is no open season in the following parts of counties:  
     Cherokee: That part north of US 64 and NC 294, east of Persimmon Creek

and Hiwassee Lake, south of Hiwassee Lake, and west of Nottely River.

~~Jackson: That part north of SR 1762 and NC 281, east of SR 1757 and south of SR 1756.~~

Madison: That part north of the French Broad River, south of US 25-70, and west of SR 1319.

~~Polk: That part northwest of NC 108~~

~~and west of I 26 south of Columbus-  
Rutherford. That part east of US 221  
and north of Business US 74.~~

- (2) ~~The Monday on or nearest October 15 through  
Third Monday after Thanksgiving to the  
second Saturday last day~~ in February in all  
other counties.

(b) Bag Limits: No restriction.

*Statutory Authority G.S. 113-134; 113-291.2.*

## SUBCHAPTER 10D - GAME LAND REGULATIONS

### .0003 HUNTING ON GAME LANDS

(a) Safety Requirements. No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with special restrictions regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.

(b) Traffic Requirements. No person shall park a vehicle on game lands in such a manner as to block traffic, gates or otherwise prevent vehicles from using any roadway.

(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated herein. This prohibition shall not apply to lag-screw steps or portable stands that are removed after use with no metal left remaining in or attached to the tree.

(d) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by this Chapter, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On managed waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys may not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment.

No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated.

No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. No person shall take or attempt to take any game birds or game animals attracted to such foods.

No live wild animals or wild birds shall be removed from any game land.

(e) Hunting Dates: For purposes of this Section

"Eastern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(A); "Central" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(D); "Northwestern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(B); "Western" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(C).

- (1) Doves may be taken on the following game lands and dove hunting is limited to Mondays, Wednesdays, Saturdays and to Thanksgiving, Christmas and New Year's Days within the federally-announced season:

Guilford County--Guilford County Farm Game Land

Lenoir County--Caswell Farm Game Land

- (2) Any game may be taken during the open seasons on the following game lands and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Year's Days. In addition, deer may be taken with bow and arrow on the opening day of the bow and arrow season for deer. Special hunts on other days may also be set up for participants in the Disabled Sportsman Program. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays. Additional restrictions apply as indicated in parentheses following specific designations:

Ashe County--Carson Woods Game Land

Bladen County--Bladen Lakes State Forest Game Lands (Handguns may not be carried and, except for muzzle-loaders, rifles larger than .22 caliber rimfire may not be used or possessed. On the Breece Tract and the Singletary Tract deer and bear may be taken only by still hunting. Deer of either sex may be taken Mondays, Wednesdays, and Saturdays from the first Wednesday after Thanksgiving through the following Wednesday. Deer of either sex may also be taken the Saturday preceding Eastern bow season with bow and arrow and the Friday preceding the Eastern muzzle-loading season with any legal weapon (with weapons exceptions described in this Paragraph) by participants in the Disabled Sportsman Program. Wild turkey hunting is by permit only.)

Caswell County--Caswell Game Land--(Deer of either sex may also be taken the Friday preceding the Central muzzle-loading season by participants in the Disabled Sportsman Program.)

Catawba and Iredell Counties--Catawba Game

Land (No deer may be taken from the tract known as Island Point and deer may be taken with bow and arrow only from the tract known as Molly's backbone.)

~~Lenoir County H.M. Bizzell, Sr., Game Land~~

Onslow County--White Oak River Impoundment Game Land (In addition to the dates above indicated, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.)

Pender County--Holly Shelter Game Land (In addition to the dates above indicated, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons. Deer of either sex may be taken on Mondays, Wednesdays, and Saturdays from the first Wednesday after Thanksgiving through the ~~third~~ fourth Saturday after Thanksgiving.) Deer of either sex may also be taken the Friday preceding the Eastern muzzle-loading season with any legal weapon and the Saturday preceding Eastern bow season with bow and arrow by participants in the Disabled Sportsman Program.)

Richmond, Scotland and Moore Counties--Sandhills Game Land (The regular gun season for deer consists of the open hunting dates from the second Monday before Thanksgiving to the third Saturday after Thanksgiving except on the field trial grounds where the gun season is from the second Monday before Thanksgiving to the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting dates during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on Monday, Wednesday and Saturday of the second week before Thanksgiving week, and during the regular gun season. Either sex deer hunting with any legal weapon is permitted on all areas the Thursday and Friday prior to the muzzle-loading season described in this Paragraph for participants in the Disabled Sportsman Program. Except for the deer seasons above indicated and the managed either-sex permit hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31. In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons. Wild turkey hunting is by permit only. Dove hunting on the field trial grounds will be prohibited from the second Sunday in September through the remainder of the hunting season.)

Robeson County--Robeson Game Land  
Robeson County--Bullard and Branch Hunting Preserve Game Land

Sampson County--Sampson Game Lands  
Stokes County--Sauratown Plantation Game Land

Wayne County--Cherry Farm Game Land, the use of centerfire rifles and handguns is prohibited

Yadkin County--Huntsville Community Farms Game Land

(3) Any game may be taken on the following game lands during the open season, except that:

- (A) Bears may not be taken on lands designated and posted as bear sanctuaries;
- (B) Wild boar may not be taken with the use of dogs on such bear sanctuaries, and wild boar may be hunted only during the bow and arrow seasons, the muzzle-loading deer season and the regular gun season on male deer on bear sanctuaries; ~~located in and west of the counties of Madison, Buncombe, Henderson and Polk;~~
- (C) On game lands open to deer hunting located in or west of the counties of Rockingham, Guilford, Randolph, Montgomery and Anson, the following rules apply to the use of dogs during the regular season for hunting deer with guns:
  - (i) Except for the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, game birds may be hunted with dogs.
  - (ii) In the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, small game in season may be hunted with dogs on all game lands except on bear sanctuaries.
- (D) On Croatan, Jordan, and Shearon Harris Game Lands, and posted waterfowl impoundments on Goose Creek Game Lands, waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons. After November 1, on the Pamlico Point, Campbell Creek, and Spring Creek impoundments, located on the Goose Creek Game Lands, a special permit is required for hunting on opening and closing days of the duck seasons, Saturdays of the duck seasons, and on Thanksgiving and New Year's day;
- (E) On the posted waterfowl impoundments of Gull Rock Game Land hunting of any species of wildlife is limited to Mondays,

Wednesdays, Saturdays; Thanksgiving, Christmas, and New Year's Days; and the opening and closing days of the applicable waterfowl seasons;

- (F) On bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk Counties dogs may not be trained or allowed to run unleashed between March 1 and October 11;
- (G) On Anson, Chatham, Jordan, New Lake, Pee Dee River, Pungo River, Shearon Harris and Gull Rock Game Lands deer of either sex may be taken from the first Wednesday after Thanksgiving through the third Saturday after Thanksgiving.
- (H) On Butner-Falls of Neuse and Person Game Lands waterfowl may be taken only on Tuesdays, Thursdays and Saturdays, Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons;
- (I) On Alcoa southeast of NC 49, Angola Bay, Butner-Falls of Neuse, Goose Creek, Hofmann Forest, and Sutton Lake and Unwharrie Game Lands deer of either sex may be taken from the first Wednesday after Thanksgiving through the following Saturday;
- (J) On Croatan and Neuse River Game Lands deer of either sex may be taken from the first Wednesday after Thanksgiving through the following Tuesday;
- (K) Horseback riding is allowed on the Caswell and Thurmond Chatham game lands only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to engaging in such activity;
- (L) On the posted waterfowl impoundments on the Jordan and Butner-Falls of Neuse game lands a special permit is required for all waterfowl hunting.
- (M) Additional restrictions or modifications apply as indicated in parentheses following specific designations:  
 Alexander and Caldwell Counties--Brushy Mountains Game Lands  
 Anson County--Anson Game Land  
 Anson, Montgomery, Richmond and Stanly Counties--Pee Dee River Game Lands (Use of centerfire rifles prohibited in that portion in Anson and Richmond counties N. Of US-74.)  
 Ashe County--Elk Ridge Game Lands  
 Ashe County--Cherokee Game Lands  
 Ashe and Watauga Counties--Elk Knob

Game Land

Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey Counties--Pisgah Game Lands (Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to October 11 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.)

Bertie--Bertie County Game Land

Bertie, Halifax and Martin Counties--Roanoke River Wetlands (Hunting is by permit only. Vehicles are prohibited on roads or trails except those operated on official Commission business or by permit holders.)

Bertie and Washington Counties--Bachelor Bay Game Lands

Beaufort and Pamlico Counties--Goose Creek Game Land

Brunswick County--Green Swamp Game Land

Burke and Cleveland Counties--South Mountains Game Lands

Caldwell, Watauga and Wilkes Counties--Yadkin Game Land

~~Camden--Camden County Game Land~~

Carteret, Craven and Jones Counties--Croatan Game Lands

Chatham County--Chatham Game Land

Chatham, Durham, Orange, and Wake Counties--Jordan Game Lands (On areas posted as "archery zones" hunting is limited to bow and arrow. Horseback riding, including all equine species, is prohibited. Target shooting is prohibited.)

Chatham and Wake Counties--Shearon Harris Game Land

Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania Counties--Nantahala Game Lands. Raccoon and opossum may be hunted only from sunset Friday until sunrise on Saturday and from sunset until 12:00 midnight on Saturday on Fires Creek Bear Sanctuary in Clay County and in that part of Cherokee County north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake and west of Nottely River; in the same part of Cherokee County dog training is prohibited from March 1 to October 11. It is unlawful to train dogs or allow dogs to run unleashed on any game land in Graham County between March 1 and October 11.



Chowan County--Chowan Game Land  
 Cleveland County--Gardner-Webb Game Land  
 Craven County--Neuse River Game Land  
 Currituck County--North River Game Land  
 Currituck County--Northwest River Marsh Game Land  
 Dare County--Dare Game Land (No hunting on posted parts of bombing range.) The use and training of dogs is prohibited from March 1 through June 30.  
 Davidson, Davie, Montgomery, Rowan and Stanly Counties--Alcoa Game Land  
 Davidson County--Linwood Game Land  
 Davidson, Montgomery and Randolph Counties--Uwharrie Game Land  
 Duplin and Pender Counties--Angola Bay Game Land  
 Durham, Granville and Wake Counties--Butner-Falls of Neuse Game Land (On that part marked as the Penny Bend Rabbit Research Area no hunting is permitted. Horseback riding, including all equine species, is prohibited. Target shooting is prohibited.)  
 Gates County--Chowan Swamp Game Land  
 Henderson, Polk and Rutherford Counties--Green River Game Lands  
 Hyde County--Gull Rock Game Land  
 Hyde County--Pungo River Game Land  
 Hyde and Tyrrell Counties--New Lake Game Land  
 Jones and Onslow Counties--Hofmann Forest Game Land  
 Lee County--Lee Game Land  
 McDowell and Rutherford Counties--Dysartsville Game Lands  
 Moore County--Moore Game Land  
 New Hanover County--Sutton Lake Game Land  
Pender County--Northeast Cape Fear Game Land  
 Person County--Person Game Land  
 Transylvania County--Toxaway Game Land (Deer of either sex may be taken with a bow and arrow on the Saturday prior to the first segment of the Western bow and arrow season by participants of the Disabled Sportsman Program.)  
 Tyrrell and Washington Counties--Lantern Acres Game Land  
 Vance County--Vance Game Land. (The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract of Vance Game Lands.)  
 Wilkes County--Thurmond Chatham Game

Land (Deer of either sex may be taken with bow and arrow on the Saturday prior to Northwestern bow and arrow season by participants of the Disabled Sportsman Program.)

- (4) Deer of either sex may be taken on the hunt dates indicated by holders of permits to participate in managed hunts scheduled and conducted in accordance with this Subparagraph on the game lands or portions of game lands included in the following schedule: ~~Friday and Saturday of the first week after Thanksgiving Week:~~

~~Uwharrie and Alcoa southeast of NC 49~~  
 Thursday and Friday of the week before Thanksgiving Week:

Sandhills east of US 1  
 Sandhills west of US 1

Application forms for permits to participate in managed deer hunts on game lands, together with pertinent information and instructions, may be obtained from hunting and fishing license agents and from the Wildlife Resources Commission. Completed applications must be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits are issued by random computer selection, are mailed to the permittees prior to the hunt, and are nontransferable. A hunter making a kill must tag the deer and report the kill to a wildlife cooperator agent.

- (5) The following game lands and ~~Federal Wildlife Refuge~~ refuges are closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission: Bertie, Halifax and Martin Counties--Roanoke River Wetlands;

Bertie County--Roanoke River National Wildlife Refuge.

Dare County--Dare Game Lands (Those parts of bombing range posted against hunting)

Davie--Hunting Creek Swamp Waterfowl Refuge

Gaston, Lincoln and Mecklenburg Counties--Cowan's Ford Waterfowl Refuge.

Statutory Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife

*Resources Commission intends to amend rule cited as 15A NCAC 10D .0002.*

**Proposed Effective Date:** July 1, 1995.

**A Public Hearing** will be conducted at 10:00 a.m. on April 18, 1995 at the Archdale Building, 512 N. Salisbury St., Raleigh, NC 27604.

**Reason for Proposed Action:** *To amend rule to allow trapping on Penny Bend Rabbit Research area of Butner Falls of the Neuse game lands.*

**Comment Procedures:** *Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from April 3, 1995 through May 5, 1995. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.*

**Fiscal Note:** *This Rule does not affect the expenditures or revenues of local government or state funds.*

## CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

### SUBCHAPTER 10D - GAME LAND REGULATIONS

#### .0002 GENERAL REGULATIONS REGARDING USE

(a) Trespass. Entry on game lands for purposes other than hunting, trapping or fishing shall be as authorized by the landowner and there shall be no removal of any plants or parts thereof, or other materials, without the written authorization of the landowner. Travel is restricted, except by authorized personnel, to direct access from SR 2074 to the established waterfowl viewing stands on Cowan's Ford Waterfowl Refuge. The Wildlife Resources Commission may designate areas on game lands as either an Archery Zone, Safety Zone or Restricted Zone.

- (1) Archery Zone. On portions of game lands posted as "Archery Zones" hunting is limited to bow and arrow hunting only.
- (2) Safety Zone. On portions of game lands posted as "Safety Zones" hunting is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted safety zone on any game land.
- (3) Restricted Zone. Portions of game lands posted as "Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission.

- (4) Establishment of Archery and Restricted Zones. The Commission shall conduct a public input meeting in the area where the game land is located before establishing any archery or restricted zone. After the input meeting the public comments shall be presented to an official Commission meeting for final determination.

(b) Littering. No person shall deposit any litter, trash, garbage, or other refuse at any place on any game land except in receptacles provided for disposal of such refuse at designated camping and target-shooting areas. No garbage dumps or sanitary landfills shall be established on any game land by any person, firm, corporation, county or municipality, except as permitted by the landowner.

(c) Possession of Hunting Devices. It is unlawful to possess a firearm or bow and arrow on a game land at any time except during the open hunting seasons or hunting days for game birds or game animals, other than fox, thereon unless said device is cased or not immediately available for use, provided that such devices may be possessed and used by persons participating in field trials on field trial areas and on target shooting areas designated by the landowner, and possessed in designated camping areas for defense of persons and property; and provided further that .22 caliber pistols with barrels not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition may be carried as side arms on game lands at any time other than by hunters during the special bow and arrow and muzzle-loading firearms deer hunting seasons and by individuals training dogs during closed season without field trial authorization. This Rule shall not prevent possession or use of a bow and arrow as a licensed special fishing device in those waters where such use is authorized. During the closed firearms seasons on big game (deer, bear, boar, wild turkey), no person shall possess a shotgun shell containing larger than No. 4 shot or any rifle or pistol larger than a .22 caliber rimfire while on a game land, except that shotgun shells containing any size steel or non-toxic shot may be used while waterfowl hunting. No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, or while hunting waterfowl on Butner-Falls of Neuse Game Land or New Hope Game Land, except shotgun shells containing lead buckshot may be used while deer hunting.

#### (d) Game Lands License

##### (1) Hunting and Trapping

- (A) Requirement. Except as provided in Part (B) of this Subparagraph, any person entering upon any game land for the purpose of hunting, trapping, or participating in dog training or field trial activities must have in his possession a game lands license in addition to the appropriate hunting or trapping licenses.

(B) Exceptions

- (i) A person under 16 years of age may hunt on game lands on the license of his parent or legal guardian.
- (ii) The resident and nonresident sportsman's licenses include game lands use privileges.
- (iii) Judges and nonresidents participating in field trials under the circumstances set forth in Subsection (e) of this Rule may do so without the game lands license.
- (iv) On the game lands listed in Rule .0003(d)(1) of this Subchapter the game lands license is required only for hunting doves; all other activities are subject to the control of the landowners.

- (2) Trout Fishing. Any person 16 years of age or over, including an individual fishing with natural bait in the county of his residence, entering a game land for the purpose of fishing in designated public mountain trout waters located thereon must have in his possession a game lands license in addition to the regular fishing license and special trout license. The game lands license is not required to fish in that part of Slick Rock Creek which coincides with the Tennessee State line, or when fishing from boat on Calderwood Lake. The resident and nonresident sportsman's licenses and short-term comprehensive fishing licenses include trout fishing privileges on game lands.

(e) Field Trials and Training Dogs. A person serving as judge of a field trial which, pursuant to a written request from the sponsoring organization, has been officially authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident participating therein may do so without procuring a game lands license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence.

Any individual or organization sponsoring a field trial on the Sandhills Field Trial grounds or the Laurinburg Fox Trial facility shall file with the commission's agent an application to use the area and facility accompanied by a check for the facility use fee computed at the rate of fifty dollars (\$50.00) for each scheduled day of the trial. The total facility use fee will cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee must be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of twenty-five dollars (\$25.00) per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person

or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Laurinburg Fox Trial or the Sandhills Field Trial grounds without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the specific approval so obtained.

The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 must submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays and Saturdays from October 1 through April 1.

Dogs may not be trained or permitted to run unleashed from April 1 through August 15 on any game land located west of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission.

(f) Trapping. Subject to the restrictions contained in 15A NCAC 10B .0110, .0302 and .0303, trapping of furbearing animals is permitted on game lands during the applicable open seasons, except that trapping is prohibited:

- (1) on the field trial course of the Sandhills Game Land;
- (2) on the Harmon Den and Sherwood bear sanctuaries in Haywood County;
- (3) in posted "safety zones" located on any game land;
- (4) by the use of multiple sets (with anchors less than 15 feet apart) or bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- ~~(5) on that portion of the Butner Falls of Neuse Game Lands marked as the Penny Bend Rabbit Research area;~~
- (5) ~~(6)~~ on Cowan's Ford Waterfowl Refuge in Gaston, Lincoln and Mecklenburg Counties;
- (6) ~~(7)~~ on the Hunting Creek Swamp Waterfowl Refuge.

On those areas of state-owned land known collectively

as the Roanoke River Wetlands and including the Broadneck, Company Swamp, Conine Island, Speller-Outlaw and Urquhart tracts, controlled trapping is allowed under a permit system. For information contact the Division of Wildlife Management of the Wildlife Resources Commission.

(g) Use of Weapons. No person shall hunt or discharge a firearm or bow and arrow from a vehicle, or within 200 yards of any building or designated camping area, or within, into, or across a posted "safety zone" on any game land. No person shall hunt with or discharge a firearm within, into, or across a posted "restricted zone" on any game land.

(h) Vehicular Traffic. No person shall drive a motorized vehicle on any game land except on those roads constructed and maintained for vehicular travel and those trails posted for vehicular travel, unless such person:

- (1) is a participant in scheduled bird dog field trials held on the Sandhills Game Land; or
- (2) holds a special vehicular access identification card and permit issued by the Commission based upon competent medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission and on game lands whose owners have agreed to such use. Those game lands where this special rule applies will be designated in the game land rules and map book. This special access rule for disabled sportsmen does not permit vehicular access on fields, openings, roads, paths, or trails planted to wildlife food or cover. One able-bodied companion, who is identified by a special card issued to each qualified disabled person, may accompany a disabled person to provide assistance, provided the companion is at all time in visual or verbal contact with the disabled person. The companion may participate in all lawful activities while assisting a disabled person, provided license requirements are met. Any vehicle used by a qualified disabled person for access to game lands under this provision must prominently display the vehicular access permit issued by the Wildlife Resources Commission in the passenger area of the vehicle.

(i) Camping. No person shall camp on any game land except on an area designated by the landowner for camping.

(j) Swimming. Swimming is prohibited in the lakes

located on the Sandhills Game Land.

(k) Disabled Sportsman Program. In order to qualify for special hunts for disabled sportsmen listed in 15A NCAC 10D .0003 an individual must have in their possession a Disabled Sportsman permit issued by the Commission. In order to qualify for the permit, the applicant must provide medical certification of one or more of the following disabilities:

- (1) amputation of one or more limbs;
- (2) paralysis of one or more limbs;
- (3) dysfunction of one or more limbs rendering the person unable to perform the task of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane;
- (4) disease or injury or defect confining the person to a wheelchair, walker, or crutches; or
- (5) legal deafness, meaning the inability to hear and/or understand oral communications with or without assistance of amplification devices.

Participants in the program, except those qualifying by deafness, may operate vehicles on ungated or open-gated roads normally closed to vehicular traffic on Game Lands owned by the Wildlife Resources Commission. Each program participant may be accompanied by one able-bodied companion provided such companion has in his possession the companion permit issued with the Disabled Sportsman permit.

(l) Release of Animals. It is unlawful to release pen-raised animals or birds, or wild animals or birds on game lands without prior written authorization.

*Statutory Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306.*

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**N**otice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10F .0317.

**Proposed Effective Date:** July 1, 1995.

**A Public Hearing** will be conducted at 10:00 a.m. on April 24, 1995 at the Archdale Building, 3rd Floor Conference Room, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

**Reason for Proposed Action:** To establish a regulated speed zone on a designated body of water on Lake Tillery in Stanly County.

**Comment Procedures:** Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of

written comments from April 3, 1995 through May 3, 1995. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

**Fiscal Note:** This Rule does not affect the expenditures or revenues of local government or state funds.

## CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

### SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

#### **.0317 STANLY COUNTY**

(a) Regulated Areas. This Rule applies to the following waters and portions of waters:

- (1) that portion of Narrows Reservoir (Badin Lake) which lies within the boundaries of Stanly County,
- (2) that portion of Lake Tillery which lies within the boundaries of Stanly County.

(b) Speed Limit Near Ramps. No person shall operate a vessel at greater than no-wake speed within 50 yards of any public boat launching ramp while on the waters of a regulated area described in Paragraph (a) of this Rule.

(c) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area established with the approval of the Executive Director, or his representative, on the waters of a regulated area described in Paragraph (a) of this Rule.

(d) Speed Limit in Specific Zones. No person shall operate a vessel at greater than no-wake speed within 50 yards of the following marked zones located on any regulated area described in Paragraph (a) of this Rule:

- (1) Mountain Creek Cove.

(e) ~~(d)~~ Placement and Maintenance of Markers. The Board of Commissioners of Stanly County is hereby designated a suitable agency for placement and maintenance of the markers hereby authorized, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers. With regard to marking the regulated areas described in Paragraph (a) of this Rule, supplementary standards as set forth in Rule .0301(g)(1) to (8) of this Section shall apply.

*Statutory Authority G.S. 75A-3; 75A-15.*

## TITLE 21 - OCCUPATIONAL LICENSING BOARDS

### CHAPTER 50 - BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Examiners of Plumbing, Heating & Fire Sprinkler Contractors intends to amend rules cited as 21 NCAC 50 .0402 and .0505.

**Proposed Effective Date:** September 1, 1995.

**Public Hearing** will be conducted at 8:30 a.m. on June 28, 1995 at the State Board of Examiners of Plumbing, Heating & Fire Sprinkler Contractors, 801 Hillsborough Street, Suite 403, Raleigh, NC 27603.

#### **Reason for Proposed Action:**

**21 NCAC 50 .0402** - To clarify the responsibility of the licensee to assure not only that the appropriate building permit is acquired from the unit of local government but also that the inspection which is expected to take place will be requested at the appropriate time.

**21 NCAC 50 .0505** - Clarification of enforcement standard of general supervision applied by Board pursuant to statute.

**Comment Procedures:** Persons wishing to present oral data, views or argument on these proposed rule changes may do so at the public hearing. It is requested but not required that the Board's office be notified 2 days in advance of the public hearing. Comments should be limited to 10 minutes. The address of the Board is 801 Hillsborough St., Suite 403, Raleigh, NC. Written comments or arguments may be presented no later than June 28, 1995.

**Fiscal Note:** This Rule does not affect the expenditures or revenues of local government or state funds.

## SECTION .0400 - GENERAL PROCEDURES

### **.0402 PERMITS**

(a) A licensed contractor shall assure that a permit is obtained from the local Code Enforcement official before commencing any work for which a license is required by the Board. The contractor shall also assure that a request for final inspection is made within 10 days of substantial completion of the work for which license is required, absent agreement with the owner and the local Code Enforcement official.

(b) A licensed contractor shall not authorize permits to be obtained or allow his license number to appear on permits except for work over which he will provide general supervision until the completion of the work, for which he holds the contract and for which he receives all contractual payments.

*Statutory Authority G.S. 87-18; 87-26.*

## SECTION .0500 - POLICY STATEMENT

AND INTERPRETATIVE RULES

**.0505 GENERAL SUPERVISION AND STANDARD OF COMPETENCE**

(a) The general supervision required by G.S. 87-26 is that degree of supervision which is necessary and sufficient to ensure that the contract is performed in a workmanlike manner and with the requisite skill and that the installation is made properly, safely and in accordance with applicable codes and rules. General supervision requires that review of the work done pursuant to the license be performed while the work is in progress and the ability of the licensee to respond in a timely manner to problems that may arise during the hours when work being done under his license qualifications is in progress. A licensee is deemed unable to review the work or respond to problems during the hours when he is committed to an employer or firm other than the licensed firm. During the hours a licensee has committed himself to other employment, the licensed firm can do no plumbing, heating or fire sprinkler contracting work which is dependent upon the license qualifications of such licensee. Work performed by a licensed firm under the foregoing conditions is deemed to have been unsupervised.

(b) The Board recognizes the provisions of the North Carolina Building Code, including the provisions of the Southern Building Code to the extent adopted by the Building Code Council of North Carolina from time to time as the minimum standard of competence applicable to contractors licensed by the Board. Licensees are required to design and install systems which meet or exceed the minimum standards of the North Carolina State Building Code and Manufacturer's specifications and installation instructions and accepted standards prevailing in the industry.

Statutory Authority G.S. 87-18; 87-23; 87-26.

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**CHAPTER 53 - BOARD OF LICENSED PROFESSIONAL COUNSELORS**

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Licensed Professional Counselors intends to adopt rules cited as 21 NCAC 53 .0205 - .0211; .0305 - .0310; .0403 - .0405; .0601 - .0604; amend 21 NCAC 53 .0204 and .0301.

Proposed Effective Date: July 1, 1995.

A Public Hearing will be conducted at 1:00 p.m. on May 2, 1995 at the North Carolina Association of Educators, Dining Room, 700 S. Salisbury Street, Raleigh, NC.

Reason for Proposed Action: These rules have been written in order to comply with Article 24, Chapter 90 of

the North Carolina General Statutes.

**Comment Procedures:** Interested persons may present written or oral statements relevant to the actions proposed at the hearing to be held as indicated above. Written statements not presented at the hearing should be submitted before May 3, 1995 to the following address: NCBLPC, PO Box 21005, Raleigh, NC 27619-1005.

**Fiscal Note:** This Rule does not affect the expenditures or revenues of local government or state funds.

**SECTION .0200 - DEFINITIONS AND CLARIFICATION OF TERMS**

**.0204 PROFESSIONAL DISCLOSURE STATEMENT**

A professional disclosure statement ~~refers to~~ is a printed ~~statement document~~ that includes the ~~licensee's~~ professional credentials, ~~the services offered, and the fee schedule.~~ following information: name of licensee; the licensee's highest relevant degree, year degree received, and name of institution granting the degree; names and numbers of all relevant credentials (licenses, certificates, registrations, etc); number of years of counseling experience; description of services offered and clientele (populations) served; length of sessions, specific fee or range of fees charged per session (if no fee is charged, a statement to that effect), and methods of payments for services, including information about billing/insurance reimbursement, EAP, contract, HMO, etc.; an explanation of confidentiality, including responsibilities and exceptions; a statement of procedure for registering complaints, including the full name and address of the Board; and signature and date spaces for both client and licensee. A current copy of this statement must be filed with and approved by the Board and a copy must be provided to each client prior to the performance of professional counseling services. Any changes in the disclosure statement must be submitted to and approved by the Board. The counselor must retain a file copy of the disclosure statement signed by each client.

Statutory Authority G.S. 90-343; 90-334, 1993 S.L. c. 514, s. 5.

**.0205 COUNSELING EXPERIENCE**

Counseling [counseling services as defined in G.S. 90-330 (a)(3)] experience applicable to the experience requirement for licensure consists of master's and post-master's supervised counseling experience in professional settings for a period of at least two years, including a minimum of 2,000 hours of such experience. To be applicable, experience must be gained at a rate of not less than eight hours per week. At least 100 hours of individual and/or group clinical supervision must be documented during the period of supervised experience at a rate of not less than one hour of clinical supervision per

40 hours of experience, and at least three-quarters of the hours of clinical supervision must be individual.

*Statutory Authority G.S. 90-334 (i); 90-336 (b)(2).*

#### **.0206 MASTER'S COUNSELING EXPERIENCE**

Master's counseling experience applicable to the experience requirement for licensure consists of supervised counseling experiences in professional settings in practica and internships which are part of the supervised course of study in the master's program in counseling in which the individual is enrolled.

*Statutory Authority G.S. 90-332.1 (a)(3); 90-334(i); 90-336 (b)(2).*

#### **.0207 PROFESSIONAL SETTING**

A professional setting is one in which actual counseling occurs, i.e., counseling services are offered to an identified clientele on a regular basis. Professional settings shall include, but not be limited to, such public and private settings as: mental health centers, hospitals, elementary and secondary schools, university and community college counseling centers, and supervised independent practices.

*Statutory Authority G.S. 90-334(i); 90-336 (b)(2).*

#### **.0208 SUPERVISED PROFESSIONAL PRACTICE**

Supervised professional practice consists of counseling experience under the supervision of a qualified clinical supervisor, as defined by the Board, including a minimum of at least one hour of individual and/or group clinical supervision per 40 hours of counseling practice. At least three-quarters of the hours of clinical supervision must be individual.

*Statutory Authority G.S. 90-334(i); 90-336 (b)(2).*

#### **.0209 QUALIFIED CLINICAL SUPERVISOR**

A qualified clinical supervisor is a licensed professional counselor with at least a master's degree in counseling and a minimum of five years of counseling experience. Other equivalently credentialed and qualified mental health professionals, as determined by the Board on a case-by-case basis, may be approved by the Board.

*Statutory Authority G.S. 90-330 (a)(4); 90-334(i); 90-336 (b)(2).*

#### **.0210 INDIVIDUAL CLINICAL SUPERVISION**

Individual clinical supervision consists of face-to-face contact between supervisee and supervisor during which the supervisee's counseling experience is discussed and critiqued. The discussion and critique must be based on live observations, video-tapes, audio-tapes, or verbatim transcripts of actual counseling sessions conducted by the

supervisee. Supervisee self-reports and process (case) notes may be used to supplement the more direct forms and records of the supervisee's counseling sessions, but may not be used exclusively in lieu of them.

*Statutory Authority G.S. 90-334(i); 90-336 (b)(2).*

#### **.0211 GROUP CLINICAL SUPERVISION**

Group clinical supervision consists of face-to-face contact between groups of supervisees (not to exceed 10 supervisees per group) and supervisor during which the supervisees' counseling experiences are discussed and critiqued. The discussions and critiques must be based on live observations, video-tapes, audio-tapes, or verbatim transcripts of actual counseling sessions conducted by the supervisees. Supervisee self-reports and process (case) notes may be used to supplement the more direct forms and records of the supervisees' counseling sessions, but may not be used exclusively in lieu of them.

*Statutory Authority G.S. 90-334(i); 90-336 (b)(2).*

### **SECTION .0300 - HOW TO OBTAIN LICENSURE**

#### **.0301 APPLICATIONS**

Inquiries are to be directed to and applications and forms are to be obtained from and returned to the Administrator of the Board. Applications must be submitted only on forms obtained directly from the Board office.

*Statutory Authority G.S. 90-334; 90-336(a); 1993 S.L. c. 514, s. 5.*

#### **.0305 EXAMINATION**

The National Counseling Examination (NCE) of the National Board for Certified Counselors (NBCC) is the examination required for licensure. The Board may accept similar examinations administered by other state counselor licensing boards and professional counselor credentialing associations on a case-by-case basis if the Board determines that such examinations are equivalent to the NCE relative to content and minimum satisfactory performance level.

*Statutory Authority G.S. 90-334(g); 90-336 (b)(3); 90-337.*

#### **.0306 REPORTING OF SCORES**

Each applicant for licensure shall be informed in writing whether s/he has passed or failed the examination. Each applicant's score and the score required for passing shall be reported.

*Statutory Authority G.S. 90-334(g); 90-336 (b)(3).*

#### **.0307 RETAKING OF EXAMINATION**



Applicants who do not pass the examination may retake it at the next regularly scheduled examination date upon registering and paying the required examination fee. Applicants who fail the examination a second time during an application period shall be denied licensure; such applicants may reapply for licensure.

*Statutory Authority G.S. 90-334(g)(j).*

### **.0308 LPC BOARD ELIGIBLE STATUS**

Applicants for licensure who have met all requirements except for the supervised experience requirement and who are exempt from licensure under the provisions of G.S. 90-332.1 (a)(4) may be designated LPC Board Eligible upon approval by the Board of their arrangements for supervision during the period allowed by the Board to meet the remaining experience requirement. Individuals granted LPC Board Eligible status shall be bound by the same renewal and continuing education requirements as Licensed Professional Counselors.

*Statutory Authority G.S. 90-332.1 (a)(4); 90-336 (b)(2).*

### **.0309 RECEIPT OF APPLICATION**

Applications and all supporting documentation must be received by the Board (not postmarked) by the close of the business day not less than 60 days prior to the next regularly scheduled examination date in order for applicants to be eligible to take the examination on that date.

*Statutory Authority G.S. 90-336(a).*

### **.0310 AGREEMENT TO ABIDE BY NCBLPC ETHICAL STANDARDS**

Upon application for initial license and upon application for each succeeding renewal of such license, if granted, each applicant shall sign a statement agreeing to abide by the ethical standards adopted by the Board.

*Statutory Authority G.S. 90-334(g); 90-336(a).*

## **SECTION .0400 -DISCIPLINARY PROCEDURES**

### **.0403 ALLEGED VIOLATIONS**

All complaints of alleged violations must be in writing and must be signed by the complainant(s). The name(s) will be kept confidential and written permission will be required for disclosure of the name(s) if any investigation/hearing is conducted.

*Statutory Authority G.S. 90-334.*

### **.0404 FORMAL COMPLAINTS**

Formal complaints of a Licensed Professional Counselor's unethical conduct must bear the complainant's signature, include the complainant's address and telephone

number, date and location of the alleged violation(s), a detailed description of the incident(s), and required signed releases.

*Statutory Authority G.S. 90-334.*

### **.0405 DISCIPLINARY ACTIONS**

Board disciplinary actions may include the following:

- (1) Reprimand. Reprimand is a public rebuke and sanction by the Board for misconduct in the practice of counseling. The Board may require specific follow-up actions by the counselor.
- (2) Probation. Probation is a stay of suspension or revocation allowing limited practice within conditions stipulated by the Board. Violation of any of these conditions can result in suspension or revocation.
- (3) Suspension. Suspension is the withdrawal of privilege to practice for a specified period of time.
- (4) Revocation. Revocation is the withdrawal of privilege to practice as a licensed professional counselor in the State of North Carolina.

*Statutory Authority G.S. 90-334.*

## **SECTION .0600 - RENEWAL OF LICENSE**

### **.0601 RENEWAL PERIOD**

Newly issued licenses shall be effective upon the date of issuance by the Board and shall expire on the second June 30 thereafter. The renewal period for a newly issued license, therefore, may be less than two years. Following the first renewal of a newly issued license, the renewal period shall be two years and shall run from July 1 in the first year through June 30 in the second year.

*Statutory Authority G.S. 90-339.*

### **.0602 RENEWAL REQUEST FORM**

Requests for license renewal shall be submitted on the original Request for Continuing Education Activities Approval forms provided by the Board and in accordance with instructions provided by the Board. All requested information and supporting documentation must be provided and the forms must be signed and dated.

*Statutory Authority G.S. 90-334(g); 90-336(a); 90-339(b).*

### **.0603 CONTINUING EDUCATION**

(a) Continuing education is required for the renewal of licenses to ensure that Licensed Professional Counselors maintain their professional knowledge and competency in the field of counseling. Continuing education activities appropriate for the purpose of license renewal are those that are directed toward professionals in the mental health field and that focus on increasing knowledge and skills in the practice of counseling in one or more of the following



approved content areas as defined in the Board's License Renewal Guidelines: counseling theory; human growth and development; social and cultural foundations; the helping relationship; group dynamics, processing, and counseling; lifestyle and career development; appraisal of individuals; diagnosis and treatment planning; research and evaluation; and professional orientation.

(b) Forty contact hours of continuing education are required within the two-year license renewal period. However, in the cases of newly issued licenses in which the initial renewal periods are less than two full years, 30 contact hours are required. Contact hours are defined as the number of actual clock hours spent in direct participation in a structured education format as a learner. Typically, one Continuing Education Unit (CEU) is equivalent to 10 contact hours. In a college or university graduate course, one semester hour of credit is equivalent to 15 contact hours and one quarter hour of credit is equivalent to 10 contact hours. It is the responsibility of the LPC to engage in acceptable categories of continuing education and to secure required documentation as described in the Board's License Renewal Guidelines.

*Statutory Authority G.S. 90-334(g); 90-339(b).*

#### **.0604 FAILURE TO SECURE SUFFICIENT CONTINUING EDUCATION FOR RENEWAL OF LICENSE**

Licensed Professional Counselors who fail to document sufficient appropriate continuing education activities to renew their licenses will be notified in writing of the deficiencies in their continuing education activities and will be allowed forty five (45) days from the date of notification to respond to the noted deficiencies. Continuing education activities cannot be undertaken during this period for the purpose of supplementing the continuing education activities submitted on the renewal form. The licenses of LPCs who fail to respond within the forty five day period following notification shall lapse and be subject to the late renewal fee. LPCs who are unable to satisfactorily clarify the problem(s) with their continuing education activities have the option of retaking the National Counselor Examination (NCE) for the purpose of renewal of their lapsed licenses within one year of the expiration dates of their licenses (which in all cases fall on June 30 in the year of expiration). Passing results are required for license renewal. Failure to take and pass the NCE within one year after the license's expiration date will require that a license be reissued only upon application as for an original license.

*Statutory Authority G.S. 90-334(g); 90-339.*

*The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 150B-21.9(a). State agencies are required to respond to RRC as provided in G.S. 150B-21.12(a).*

## ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

### Coastal Management

|  |                      |                 |
|--|----------------------|-----------------|
| <i>15A NCAC 7H .0308 - Specific Use Standards for Ocean Hazard Areas</i> | <i>RRC Objection</i> | <i>03/16/95</i> |
| <i>15A NCAC 7M .0202 - Policy Statements</i>                             | <i>RRC Objection</i> | <i>03/16/95</i> |

### Environmental Health

|   |                      |                 |
|---|----------------------|-----------------|
| <i>15A NCAC 18A .2801 - Definitions</i>   | <i>RRC Objection</i> | <i>01/19/95</i> |
| <i>Rule Approved as Written</i>   | <i>Obj. Removed</i>  | <i>02/16/95</i> |
| <i>15A NCAC 18A .2810 - Specifications for Kitchens, Based on Number/Children</i> | <i>RRC Objection</i> | <i>01/19/95</i> |
| <i>Agency Revised Rule</i>  | <i>Obj. Removed</i>  | <i>02/16/95</i> |

## LICENSING BOARDS AND COMMISSIONS

### Board of Cosmetic Art Examiners

|  |                      |                 |
|--|----------------------|-----------------|
| <i>21 NCAC 14F .0014 - Salon Renewal</i>   | <i>RRC Objection</i> | <i>03/16/95</i> |
| <i>21 NCAC 14I .0401 - App. for Licensure by Individuals Who Have Been Convicted of a Felony</i> | <i>RRC Objection</i> | <i>03/16/95</i> |
| <i>21 NCAC 14I .0402 - Requests for Preapplication Review of Felony Convictions</i>              | <i>RRC Objection</i> | <i>03/16/95</i> |

### Board of Examiners of Electrical Contractors

|   |                      |                 |
|---|----------------------|-----------------|
| <i>21 NCAC 18B .0901 - Applicants Convicted of Crimes</i> | <i>RRC Objection</i> | <i>01/19/95</i> |
| <i>No Response from Agency</i>                            | <i>Obj. Cont'd</i>   | <i>02/16/95</i> |

### Board of Opticians

|  |                      |                 |
|--|----------------------|-----------------|
| <i>21 NCAC 40 .0314 - Apprenticeship and Internship Requirements; Registration</i> | <i>RRC Objection</i> | <i>11/17/94</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Cont'd</i>   | <i>11/17/94</i> |
| <i>No Response from Agency</i>   | <i>Obj. Cont'd</i>   | <i>12/15/94</i> |
| <i>Agency Responded</i>  | <i>Obj. Cont'd</i>   | <i>01/19/95</i> |
| <i>No Response from Agency</i>   | <i>Obj. Cont'd</i>   | <i>02/16/95</i> |

## PUBLIC EDUCATION

### Elementary and Secondary Education

|   |                      |                 |
|---|----------------------|-----------------|
| <i>16 NCAC 6C .0207 - Prospective Teacher Scholarship Loans</i> | <i>RRC Objection</i> | <i>02/16/95</i> |
|---|----------------------|-----------------|

## REVENUE

### Sales and Use Tax

|   |                      |                 |
|---|----------------------|-----------------|
| <i>17 NCAC 7B .1123 - Certain Sales to Commercial Livestock and Poultry Farmers</i>           | <i>RRC Objection</i> | <i>03/16/95</i> |
| <i>17 NCAC 7B .5445 - Commercial Swine, Livestock and Poultry Farmers' Cert. Form: E-599S</i> | <i>RRC Objection</i> | <i>03/16/95</i> |

## SECRETARY OF STATE

### Notary Public Division

|   |                      |                 |
|---|----------------------|-----------------|
| <i>18 NCAC 7 .0301 - Approved Course of Study</i> | <i>RRC Objection</i> | <i>12/15/94</i> |
| <i>No Response from Agency</i>                    | <i>Obj. Cont'd</i>   | <i>01/19/95</i> |
| <i>Rule Returned to Agency</i>                    | <i>Obj. Cont'd</i>   | <i>02/16/95</i> |
| <i>18 NCAC 7 .0302 - Instructors</i>              | <i>RRC Objection</i> | <i>12/15/94</i> |
| <i>No Response from Agency</i>                    | <i>Obj. Cont'd</i>   | <i>01/19/95</i> |
| <i>Rule Returned to Agency</i>                    | <i>Obj. Cont'd</i>   | <i>02/16/95</i> |

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.*

| <u>AGENCY</u>   | <u>CASE<br/>NUMBER</u> | <u>ALJ</u> | <u>DATE OF<br/>DECISION</u> | <u>PUBLISHED DECISION<br/>REGISTER CITATION</u> |
|---|------------------------|------------|-----------------------------|---|
| <b>ADMINISTRATION</b>   |                        |            |                             |   |
| <i>Division of Purchase and Contract</i>  |                        |            |                             |   |
| Senter-Sanders Tractor Corp. v. Admin., Div of Purchase & Contract  | 94 DOA 0803            | Nesnow     | 03/06/95                    |   |
| <b>ALCOHOLIC BEVERAGE CONTROL COMMISSION</b>  |                        |            |                             |   |
| Albert Stanley Tomanec v. Alcoholic Beverage Control Commission   | 94 ABC 1168            | Becton     | 03/07/95                    |   |
| <b>CRIME CONTROL AND PUBLIC SAFETY</b>  |                        |            |                             |   |
| <i>Crime Victims Compensation Commission</i>  |                        |            |                             |   |
| Wayne L. Utley v. Crime Victims Compensation Commission   | 94 CPS 1180            | Becton     | 03/07/95                    |   |
| Thomasine Inman v. Crime Victims Compensation Commission  | 94 CPS 1731            | Nesnow     | 03/09/95                    |   |
| Irmgard Gordos v. Crime Victims Compensation Commission   | 94 CPS 1782            | Gray       | 03/09/95                    |   |
| <b>ENVIRONMENT, HEALTH, AND NATURAL RESOURCES</b>   |                        |            |                             |   |
| Setzer Bros. Inc. v. Environment, Health, and Natural Resources   | 94 EHR 1676            | Nesnow     | 03/09/95                    |   |
| <i>Davidson County Health Department</i>  |                        |            |                             |   |
| John Dee Clodfelter v. Davidson County Health Dept.; EHNHR  | 94 EHR 1037            | Chess      | 03/13/95                    |   |
| <i>Hyde County Health Department</i>  |                        |            |                             |   |
| Fritzner Henry v. Hyde County Health Department   | 94 EHR 0924            | Gray       | 03/09/95                    |   |
| <i>Maternal and Child Health</i>  |                        |            |                             |   |
| Philip Haskins v. EHNHR, Div. of Maternal & Child Health  | 94 EHR 1777            | Chess      | 03/09/95                    |   |
| <b>EQUAL EMPLOYMENT OPPORTUNITY</b>   |                        |            |                             |   |
| Marsha Dianne McKoy v. DHR, Div. of MH/DD/SAS, Caswell Center   | 94 EEO 0379            | Chess      | 02/21/95                    |   |
| <b>HUMAN RESOURCES</b>  |                        |            |                             |   |
| <i>Division of Child Development</i>  |                        |            |                             |   |
| Iola Malloy v. DHR, Division of Child Development   | 94 DHR 0849            | Mann       | 03/03/95                    |   |
| <i>Facility Services</i>  |                        |            |                             |   |
| Mildred Reece, Calvin Reece v. DHR, Division of Facility Svcs,<br>Domiciliary & Group Care Section  | 94 DHR 1783            | Gray       | 03/16/95                    |   |
| <i>Certificate of Need Section</i>  |                        |            |                             |   |
| Retirement Villages, Inc. (Lessor), and Liberty Healthcare Ltd.<br>Partnership (Lessee) D/B/A Countryside Villa of Duplin v. DHR,<br>Division of Facility Services, Certificate of Need Section<br>and<br>Beaver Properties/Wallace, Inc., and Brian Center Health & Retirement/<br>Wallace, Inc. | 94 DHR 0403            | Chess      | 12/14/94                    |   |

| <u>AGENCY</u>   | <u>CASE<br/>NUMBER</u> | <u>ALJ</u> | <u>DATE OF<br/>DECISION</u> | <u>PUBLISHED DECISION<br/>REGISTER CITATION</u> |
|---|------------------------|------------|-----------------------------|---|
| <i>Division of Social Services</i>                                  |                        |            |                             |   |
| <i>Child Support Enforcement Section</i>                            |                        |            |                             |   |
| Daniel J. Carter v. Department of Human Resources                   | 91 CSE 1103            | Morrison   | 03/03/95                    |   |
| Elbert Quick v. Department of Human Resources                       | 93 CSE 1169            | Chess      | 03/08/95                    |   |
| Clement McMillan v. Department of Human Resources                   | 93 CSE 1208            | Chess      | 03/08/95                    |   |
| James R. Gray v. Department of Human Resources                      | 93 CSE 1268            | Chess      | 03/08/95                    |   |
| Lacy Green, Jr. v. Department of Human Resources                    | 93 CSE 1295            | Chess      | 03/08/95                    |   |
| Edwin A. Clarke v. Department of Human Resources                    | 93 CSE 1319            | Chess      | 03/08/95                    |   |
| Lucille B. Dutter v. Department of Human Resources                  | 93 CSE 1558            | Chess      | 03/13/95                    |   |
| Paul E. Strawcutter v. Department of Human Resources                | 93 CSE 1713            | Mann       | 03/13/95                    |   |
| Robert G. Baker v. Department of Human Resources                    | 94 CSE 1094            | Chess      | 03/06/95                    |   |
| Julian Lattimore v. Department of Human Resources                   | 94 CSE 1131            | Reilly     | 03/13/95                    |   |
| James McFadden v. Department of Human Resources                     | 94 CSE 1132            | West       | 03/14/95                    |   |
| Raymond B. Clontz Jr. v. Department of Human Resources              | 94 CSE 1149            | Nesnow     | 03/03/95                    |   |
| Ruby Fewell Henry v. Department of Human Resources                  | 94 CSE 1157            | Nesnow     | 03/16/95                    |   |
| Ted C. Jenkins v. Department of Human Resources                     | 94 CSE 1218            | Gray       | 03/15/95                    |   |
| Anthony J. Gibbons v. Department of Human Resources                 | 94 CSE 1219            | Gray       | 03/15/95                    |   |
| Jeffrey Thomas Chambers v. Department of Human Resources            | 94 CSE 1231            | Nesnow     | 03/03/95                    |   |
| Robert J. Holden v. Department of Human Resources                   | 94 CSE 1232            | Nesnow     | 03/15/95                    |   |
| Michael L. Wright v. Department of Human Resources                  | 94 CSE 1237            | Gray       | 03/15/95                    |   |
| Terry S. Gurganus v. Department of Human Resources                  | 94 CSE 1239            | Gray       | 03/02/95                    |   |
| John Napoleon Window Cross Pullium v. Department of Human Resources | 94 CSE 1241            | Gray       | 03/15/95                    |   |
| Michael J. Montroy v. Department of Human Resources                 | 94 CSE 1244            | Morrison   | 03/13/95                    |   |
| Dennis L. Moore v. Department of Human Resources                    | 94 CSE 1249            | Morrison   | 03/02/95                    |   |
| James Edward Knox, Jr. v. Department of Human Resources             | 94 CSE 1254            | Reilly     | 03/13/95                    |   |
| David House v. Department of Human Resources                        | 94 CSE 1256            | Reilly     | 03/15/95                    |   |
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| Paul A. Card v. Department of Human Resources                       | 94 CSE 1266            | Nesnow     | 03/13/95                    |   |
| Darrin Yancey v. Department of Human Resources                      | 94 CSE 1269            | Nesnow     | 03/15/95                    |   |
| Douglas L. Lucas v. Department of Human Resources                   | 94 CSE 1270            | Nesnow     | 03/15/95                    |   |
| Gregory D. Simpson v. Department of Human Resources                 | 94 CSE 1272            | Becton     | 03/15/95                    |   |
| Michael Lynn Avery v. Department of Human Resources                 | 94 CSE 1274            | Becton     | 03/15/95                    |   |
| Elvis M. Graham v. Department of Human Resources                    | 94 CSE 1275            | Becton     | 03/15/95                    |   |
| Shawn Fonville v. Department of Human Resources                     | 94 CSE 1277            | Becton     | 03/06/95                    |   |
| Larry R. Bales v. Department of Human Resources                     | 94 CSE 1302            | Gray       | 03/02/95                    |   |
| Karl Philip Jursen v. Department of Human Resources                 | 94 CSE 1303            | Gray       | 03/15/95                    |   |
| Robert F. Catoe Jr. v. Department of Human Resources                | 94 CSE 1329            | Morrison   | 03/15/95                    |   |
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| Gary W. Gibson v. Department of Human Resources                     | 94 CSE 1334            | West       | 03/06/95                    |   |
| John E. Bolas Jr. v. Department of Human Resources                  | 94 CSE 1336            | Nesnow     | 03/15/95                    |   |
| Gary C. Wiggins v. Department of Human Resources                    | 94 CSE 1338            | Nesnow     | 03/15/95                    |   |
| Rhonnice J. Williams v. Department of Human Resources               | 94 CSE 1339            | Becton     | 03/15/95                    |   |
| Danny Ray Hensley v. Department of Human Resources                  | 94 CSE 1340            | Becton     | 03/15/95                    |   |
| Garry G. Hickman v. Department of Human Resources                   | 94 CSE 1348            | Gray       | 03/15/95                    |   |
| Willie Herring v. Department of Human Resources                     | 94 CSE 1350            | Morrison   | 03/02/95                    |   |
| Joe C. Dean v. Department of Human Resources                        | 94 CSE 1351            | Morrison   | 03/15/95                    |   |
| Jimmie E. Barnes v. Department of Human Resources                   | 94 CSE 1352            | Reilly     | 03/03/95                    |   |
| Richard J. Almeida v. Department of Human Resources                 | 94 CSE 1357            | Nesnow     | 03/15/95                    |   |
| Michael R. French v. Department of Human Resources                  | 94 CSE 1359            | Becton     | 03/15/95                    |   |
| John A. Jackson v. Department of Human Resources                    | 94 CSE 1370            | Mann       | 03/07/95                    |   |
| Cleothis B. Smith v. Department of Human Resources                  | 94 CSE 1373            | Gray       | 03/15/95                    |   |
| James Patterson v. Department of Human Resources                    | 94 CSE 1378            | Morrison   | 03/15/95                    |   |
| Thomas Colon v. Department of Human Resources                       | 94 CSE 1379            | Reilly     | 03/15/95                    |   |
| Marion Rodriguez v. Department of Human Resources                   | 94 CSE 1385            | Nesnow     | 03/03/95                    |   |
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| Scott John Tozzi v. Department of Human Resources                   | 94 CSE 1389            | Becton     | 03/15/95                    |   |
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| Jeffrey James Spence v. Department of Human Resources               | 94 CSE 1394            | Reilly     | 03/15/95                    |   |
| Byron C. Alston v. Department of Human Resources                    | 94 CSE 1396            | Nesnow     | 03/03/95                    |   |
| Richard G. Medford, Jr. v. Department of Human Resources            | 94 CSE 1415            | Morrison   | 03/02/95                    |   |
| Marion A. Ward v. Department of Human Resources                     | 94 CSE 1421            | Reilly     | 03/03/95                    |   |
| Michael A. Camp v. Department of Human Resources                    | 94 CSE 1435            | Becton     | 03/06/95                    |   |

| <u>AGENCY</u>  | <u>CASE<br/>NUMBER</u> | <u>ALJ</u> | <u>DATE OF<br/>DECISION</u> | <u>PUBLISHED DECISION<br/>REGISTER CITATION</u> |
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***Iredell County Department of Social Services***

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***UNC Hospitals***

**COUNTY OF IREDELL**

## RECOMMENDED DECISION

6. The Petitioner was advised on May 31, 1994 by Kathy Williams, her immediate supervisor, that her apparel was not appropriate under the employee's dress code for the Iredell County Department of Social Services.

7. Linda Abrams, Ms. Williams' immediate supervisor, gave Petitioner a direct order to go home and change, and advised her that if she did not do so, she would be suspended.

8. Petitioner refused to go home and change her clothing because she felt strongly that she was not in violation of the dress code.

9. On June 2, 1994, Petitioner, Bonnie Bellamy, was suspended for two days without pay for personal conduct. Her pre-suspension conference letter, dated June 2, 1994, stated, in part, that "Your refusal to accept and follow instructions and directives from your immediate supervisor and from your Income Maintenance Director on 5-31-94 are the reasons for the suspension."

10. The Petitioner does not dispute that the suspension itself was conducted in accordance with 25 NCAC 11 .2305(5).

11. Petitioner had worn the same or similar clothes many times after the dress code. All of her work clothes were of this style.

12. Petitioner has been employed with the Iredell County Department of Social Services eleven (11) years prior to the dress code.

13. The Dress Code has not kept other co-workers from wearing improper clothing and nothing was said to others when the apparel they wore was in violation of the dress code.

14. The outfit worn by Petitioner had wide legs, a split skirt and came below her knees. See Petitioner's Exhibit #2.

15. The Petitioner called Iris Mayberry as a witness who testified that she was a member of the dress code committee which had later amended the code to allow for split skirts and culottes and that she had told Petitioner that her outfit was appropriate because it was culottes. She did not consider it to be knee pants because pants fit closely to the leg. The outfit the Petitioner was wearing did not.

16. The dress code in Item 9 excludes knee pants and calf length pants. As is clear in the amendment to the dress code dated June 26, 1992, culottes are not prohibited as long as they are not more than two inches above the knee. All parties seem to agree that the outfit Petitioner was wearing was not shorter than two inches above the knee.

17. Ms. Abrams testified that she had advised Petitioner on May 25, 1994, that the outfit she was wearing, which was the same, or the same style, as the one she wore on May 31, was not appropriate and that she was not to wear it again.

18. Marva Gibbs, a worker in the same section, wore a baby doll dress, ankle boots, tights and socks. She wore this dress on several work days after the dress code was put in effect. The supervisors have their offices in the immediate area where all they supervise can be seen. A coworker found Ms. Gibbs attire to be in violation of the dress code and personally offensive. However, no action was taken. The court finds this attire would violate the dress code promulgated.

19. The court finds as a fact that it would not be likely under the circumstances that Petitioner's immediate supervisor did not see Ms. Gibbs' attire.

20. After she was ordered to go home and change, Petitioner wanted the Director, Mr. Wall, to see what she was wearing but he refused to see her.

21. The so-called dress code was not uniformly enforced.

22. The so-called dress code was too vague and indefinite to be enforced.

23. Respondent, through counsel, contends that employees must do what they are told, regardless to whether the so-called dress code is valid or not.

Based on the foregoing Stipulations and Findings of Fact, the Administrative Law Judge makes the following:

**CONCLUSIONS OF LAW**

1. As an employee of the Department of Social Services of Iredell County, the Petitioner is subject to the State Personnel Act, G.S. 126, and may be suspended only for just cause. The Respondent has burden of proof to establish just cause. N.C.G.S. 126-35.

2. To limit or curtail any fundamental right, the state has a "substantial burden of justification." Griswald v. Connecticut, 381 U.S. at 505, 85 S.Ct.1678.

3. Although in Tinker v. Des Moines Independent Community School District, 393 U.S. 503 89 S.Ct. 733, there was a school system involved, the principle is just as applicable here. In that case the court said:

"In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over students. They are possessed of fundamental rights which the State must respect."

4. If students cannot be treated in a dictatorial manner, adults certainly cannot be ordered around based upon a dress code that is arbitrarily and capriciously enforced and which is in and of itself too vague and indefinite to be enforced.

5. A supervisor was acting arbitrarily and capriciously when she ordered an employee of a county Social Services Department, Child Support Enforcement Section, to go home and change clothes, when that employee was in compliance with the so-called dress code. 42 USC Sect 1983, Constitutional Amendments, 1st and 14th.

6. A dress code adopted by a committee of employees from a county Social Services Department, Child Support Enforcement Section, as to what type of skirt or pants female employees could wear, absent showing of justification therefore, would not be upheld on grounds that disciplinary power of the agency would otherwise be diminished. Breen v. Kahl 419 F 2d. 1034, USC A Sect. 1983, Amendments 1st and 14th.

7. A dress code must provide sufficient specificity that it may be clearly understood, to the end that compliance with the standard may not be thwarted because of inexactitude or misunderstanding. Peck v. Stone 32 App. DW 506, 304 NY S2d. 881.

8. The evidence is undisputed regarding the fact that Petitioner's clothing was not in violation of the so-called dress code. Therefore, the Iredell Department of Social Services acted arbitrarily and capriciously when it suspended Petitioner for 2 days. Petitioner cannot be penalized for refusing to follow orders that infringed upon her fundamental rights in a free democratic society. (Articles 1 Secs 14 and 19 of the NC Constitution; Amendments 1 and 14 of the United States Constitution.)

9. Petitioner was engaged in a proper performance of her assigned duties and was conducting herself in a lawful and proper way at the time of this occurrence. The Court finds that she did nothing wrong and should not be punished for the improper intrusion of others while acting in a proper manner. (Tinker v. Des Moines Independent Community School District, supra)

10. Respondent lacked just cause to suspend Petitioner.

Based on the foregoing Stipulations, Findings of Facts, Conclusions of Law, and a preponderance of the substantial evidence in the record, the Administrative Law Judge makes the following:

**RECOMMENDED DECISION**

It is recommended that Respondent reverse its decision to suspend Petitioner for two days and expunge from its records all mention of the incidents of May 31, 1994, to the extent that they mention or relate in any way, including but not limited to, the dress code and the suspensions related thereto. It is further ordered that Petitioner should receive back pay



and retain benefits for the days she was wrongfully suspended by Respondent.

**ORDER**

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

**NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the State Personnel Commission.

This the 1st day of March, 1995.

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Sammie Chess, Jr.  
Administrative Law Judge

*The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.*

**TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE**

**TITLE      DEPARTMENT      LICENSING BOARDS      CHAPTER**

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**Note:** Title 21 contains the chapters of the various occupational licensing boards.

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|                      |                      |                         | State       | Local |                |                   |

**CORRECTION**

5 NCAC 5 .0001 10:01 NCR 12 07/01/95

**CULTURAL RESOURCES**

7 NCAC 2F .0002 10:01 NCR 12 07/01/95

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**REVENUE**

Tax Review Board 10:01 NCR 03







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\_\_\_\_\_  
Signature





## CHANGE OF ADDRESS

### 1. Present Address

NAME

ADDRESS

CITY

STATE

ZIP

### 2. New Address

NAME

ADDRESS

CITY

STATE

ZIP

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**Office of Administrative Hearings**

P.O. Drawer 27447

Raleigh, North Carolina 27611-7447

# FIRST CLASS MAIL

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